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GENDER INEQUALITY – A SOURCE OF DOMESTIC VIOLENCE

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Summary

In Romania, as in the rest of Europe, society faces gender inequality to the detriment of women. The main area highlighting this inequality is the involvement in household activities – significantly to the disadvantage of women. The repercussions of burdening women in this way consist of feelings of frustration, upset, discomfort, resentment, injustice, dissatisfaction with the couple relationship and with the family in general, leading to depression and anxiety. Even if we have the impression that we are progressing in many socio-professional fields, the imbalance in the assumption of domestic tasks between women and men remains a bastion of inequality.

The mass media represents another factor through which gender inequality is fueled and even promoted in Romanian society; there is a tendency to highlight a simplified image of women, that of an accessory available to any successful man. Women's achievements are minimized, the press stimulating the non-recognition of women's authority in their profession and in private life, and in the case of women involved in social and political life, the emphasis is always placed on details regarding their personal life.

The Gender Equality Index for 2024 ranked our country last in the European Union. The thematic focus of the Index was dedicated to violence against women, presenting recent developments in policies and legislation regarding this type of violence in the European Union and Member States, highlighting how the prevalence, severity, and disclosure of violence can vary among women depending on social factors, analyzing data on public attitudes towards violence against women, and exploring the links between public attitudes towards violence and levels of gender equality. Gender-based violence is widespread, severe, and underreported throughout the European Union, which faces challenges that make gender equality a more relevant and urgent issue than ever, with implications for violence against women, which represents not just a social problem, but a human rights crisis, rooted in control, domination, and inequality.

The fight for real progress requires urgent action from policymakers, civil society, and the public. The first European Union Directive 2024/1385 of the European Parliament and of the Council of 14 May 2024 on combating violence against women and domestic violence strengthens existing measures and introduces new ones in areas such as: the definition of relevant offenses and sanctions, including the criminalization of certain forms of cyber violence, female genital mutilation, and forced marriage; the protection of victims and access to justice; support for victims; improved data collection; prevention; coordination and cooperation. The Directive establishes common legal standards in all member states, entered into force on June 13, 2024, and member states have until June 14, 2027, to transpose it into national legislation. Progress towards a gender-equal Europe, alongside efforts to fully implement the Istanbul Convention and this Directive, advancing gender equality in care, facilitating women's participation in decision-making, and promoting gender-sensitive employment and social protection policies, all contribute to building societies where the prevention and eradication of violence against women is a priority.

Keywords: gender violence, imbalance, discrimination, control, domination, equal opportunities, Gender Equality Index.

Introduction. The term "gender" does not coincide with the term "sex" and is not a substitute for it, referring to the social relations between women and men, which can be changed in a political, economic, and cultural context, while the term "sex" refers to the biological differences between women and men – universal and unchangeable.

Gender is a conceptual tool used to analyze the roles, responsibilities, constraints, opportunities, and needs of men and women in any context. Gender issues originate in biological differences and are accentuated by environmental factors, cultural experiences, traditions, social norms, and values, which vary from one culture to another and from one society to another. Therefore, sex differences refer to the differences between girls and boys, women and men, which are due to ontogenetic differences (present before birth) at the level of the central nervous system and the endocrine nervous system. These differences are recorded especially at the level of physical appearance, secondary male and female sexual characteristics.

Gender differences (psychological and social) refer to the differences between girls and boys, women and men, which are added through socialization and through the internalization of the socio-cultural norms and values of femininity and masculinity. These differences are recorded especially at the behavioral level (social behavior, behavioral skills, etc.), emotional level (emotional expressiveness), and cognitive level (cognitive abilities, self-esteem, self-efficacy, etc.).

The concept of "gender equity" recognizes that women and men have different needs and powers and that these differences must be identified and addressed in a way that corrects gender imbalances. It can refer to equal treatment or different treatment, but which is considered equivalent in terms of rights, benefits, obligations, and opportunities. Although frequently used as synonyms, equality and equity are two distinct concepts. While international treaties refer to "equality", the term "equity" is frequently used in other areas. The term "gender equity" is sometimes used in a way that perpetuates stereotypes about women's roles in society, suggesting that women should be treated "equitably" according to the roles they perform. This interpretation risks perpetuating unequal gender relations and reinforcing gender stereotypes to the detriment of women. The term must therefore be used with caution so as not to mask the avoidance of an open approach to discrimination and inequality.

Equal opportunities means treating people fairly and without prejudice, but also creating conditions that encourage, appreciate diversity, and promote dignity in the workplace and in society; equality implies correcting past imbalances and ensuring that relationships proceed in a constructive manner, supporting inclusion and avoiding unjustified discrimination.

Gender discrimination is the result of treatment that prejudices a person based on a gender stereotype. This unfair treatment provides unequal opportunities for the personal self-development of girls and boys. Gender discrimination manifests itself in the health, educational, political, and economic fields and affects public as well as private life.

Subtle forms of gender violence. Violence against women includes everything that prevents them from realizing their potential, a fact that is both to their detriment and to the detriment of society. Structural violence, more difficult to recognize and understand – violence embedded in the social, political, and economic systems of society; – the unequal allocation of goods, resources, and opportunities between men and women; – social structures: instances that confirm, reinforce, and reproduce this inequality.

Sexism represents prejudice/discrimination based on sex, especially against women. The term is associated with the "second wave of feminism" (1960s-1980s). Sexism is based on the idea that women are inferior to men and must be oppressed in society. Gender inequality is the product of sexism and primarily affects women and girls, with consequences starting from birth, but it also affects men and boys, especially when they do not conform to traditional masculine stereotypes. Example: men who take care of their children, who take paternity leave, those who work in jobs predominantly or traditionally occupied by women (nurses, male nurses) or those who are not interested in subjects or activities that should concern them "as men" (DIY, certain sports, especially football, etc.).

Gender inequality. In Romania, an important step in reducing gender inequality was the accession to the European Union (EU). The negotiation process for accession stimulated public institutions to address the issue of gender equality, because meeting standards in this area constituted an accession criterion.

The main area in which gender inequality is evident is still the distribution of domestic activities, clearly to the disadvantage of the category of women who are involved in such work, regardless of whether they are housewives or employed; there are still many Romanians who consider this work to be easy or have the impression that a housewife works less than her life partner who has a job.

In our country, as globally, women have had to fight to gain their rights, but the hard work in households, which includes cooking, has remained an overwhelming burden for many of them.

Even in urban areas, where access to information and education is easier compared to rural areas, in the vast majority of families, women still handle the meal preparation process, in a proportion up to 10 times higher than the number of men who do this.

A study conducted by Tazz in partnership with Cult Market Research, on a sample of over 500 people from urban areas, represented by 51% women and 49% men, aged between 18 and 50, and which targeted trends regarding household chores among urban Romanians, focusing on their habits and perceptions in relation to meals at home, revealed worrying figures [1].

Although a slight improvement has been observed in how household chores are divided within couples, the overall situation remains alarmingly unbalanced between the two sexes.

Although almost three-quarters of urban Romanians believe that household activities should be distributed equally between women and men, 53% of women are still burdened with the responsibility of preparing meals, and only 28% of respondents believe that the task falls on both partners.

One explanation would be the perpetuation of the toxic mentality that food preparation is the responsibility of women, a mentality passed down from generation to generation and which, unfortunately, appears even in families with a good financial situation or who have had access to education. 29% of respondents state that they associate meal preparation with moments of relaxation, 43% of urban Romanians spend 5-7 hours or more per week in the kitchen, which means that in addition to a demanding job, other household chores, or time spent with children, they also spend the equivalent of a working day in the kitchen.

However, cooking is felt as a pleasure for urban Romanians only if it takes 1-2 hours/week, and then it becomes stressful for 26% of respondents. The majority of urban Ro-

manians (43%) still cook daily or almost daily, 38% cook once every 2-3 days, especially women and people aged between 30 and 39. Even cooking occasions revolve around responsibility towards the family: dinner or lunch with the family (63%) and meals for the children (60%).

A study published in March 2024 by the Demographic Studies Institute of Barcelona on the behavior of 74,630 people from 15 European countries, including Romania [2], revealed that women continue to spend more time on household chores compared to men.

In our country, mothers allocate an average of 4 hours and 41 minutes of their daily time to household chores, of which 82 minutes are for cleaning and washing dishes, while fathers only spend 1 hour and 41 minutes per day, of which only 18 minutes are for cleaning and washing dishes.

In Romania, Italy, and Greece, household chores are seen as women's work, even in the case of women who have successful careers and earn more than their husbands; in Greece, women spend an average of 4.7 hours daily on these tasks, while men dedicate only about one hour per day.

In Nordic countries such as Finland and Norway, although the differences are smaller, women are still at a disadvantage, spending approximately three hours a day on household activities, while men spend only two hours a day.

The repercussions of burdening women in this way consist of feelings of frustration, upset, discomfort, resentment; women feel unappreciated, tired, and overwhelmed by this work, which generates feelings of injustice, dissatisfaction with the couple relationship and the family relationship in general, leading to severe depression.

Even if we have the impression of progress in many socio-professional fields, these data remind us that the imbalance in domestic tasks within couples remains a bastion of inequality.

The mass media represents another factor through which gender inequality is fueled and even promoted in Romanian society; there is a tendency to highlight a simplified image of women, that of an accessory available to any successful man. An example is the widely circulated statement – behind every successful man is a devoted woman – which is intended to be appreciative, but in reality places women in a humble, inferior position, in the shadow of the man, who is the star, in the spotlight.

Moreover, women's achievements are often minimized, the press stimulating the non-recognition of women's authority in their profession and in private life. In the case of women involved in social and political life, the emphasis is always placed on details regarding their personal life and not on initiatives that could promote their image positively.

According to the 2024 Gender Equality Index, produced by the European Institute for Gender Equality (EIGE) [3], Romania ranks last in the EU, with 57.5 points out of 100, below the EU score of 71. The national score has improved compared to previous years, but it is consistently and considerably lower than the EU average, with the gap from the EU average widening over time.

By domain, Romania's scores compared to the EU are as follows: work – Romania 67.5/ EU 74.2; money – Romania 72.8; EU 83.4; knowledge – Romania 55.4; EU 64.2; time – Romania 69.2; EU 68.5; power – Romania 32.8; EU 61.4; health – Romania 70.4; EU 88.6; violence – Romania 36.5; EU 31.9.

Between 2010 and 2022, the full-time employment rate for women decreased from 42% to 40%, while for men it increased slightly, widening the gender gap. In 2022, the

largest gender gaps were observed among non-native women and men, couples with children, and those with a low level of education.

Between 2021 and 2022, the share of women at risk of poverty decreased slightly, while the share of men remained constant. In 2022, the at-risk-of-poverty rate was highest among people with a low level of education – at 40% for women and 45% for men, followed by single women (33%). The largest gap in the at-risk-of-poverty rate is between women and men aged 65 and over.

In 2022, 52% of women and 40% of men reported caring daily for children, grandchildren, the elderly, or people with disabilities, which is still one of the largest gender gaps in care responsibilities among all member states. The gender gap remained high for women and men aged 65 and over and for women and men in couples with children.

National legislation on gender equality. Romania has a protective legislative framework regarding gender equality, starting with the Constitution of Romania and the Labor Code, and continuing with Law No.62/2009 for the approval of Government Emergency Ordinance (O.U.G.) No.61/2008 on the implementation of the principle of equal treatment between women and men regarding access to and supply of goods and services; Law No.44/2008 for the approval of O.U.G. No.67/2007 on the application of the principle of equal treatment between men and women within occupational social security schemes; Law No.202/2002 on equal opportunities and treatment between women and men; Government Decision (G.D.) No.537/2004 for the approval of the Methodological norms for the application of the provisions of O.U.G. No.96/2003 on the protection of maternity in the workplace; Government Decision No.285/2004 on the application of the National Action Plan for Equal Opportunities between Women and Men; Government Decision No.266/2004 on the balanced participation of women and men in expert teams sent on mission to the European Commission; Law No.25/2004 for the approval of O.U.G. No.96/2003 on the protection of maternity in the workplace; Government Decision No.1273/2000 on the approval of the National Action Plan for Equal Opportunities between Women and Men, Law No.210/1999 on paternity leave, G.D. No.484/2007 on the approval of the Statute of the National Agency for Equal Opportunities between Women and Men; Order No.157/2007 on the approval of the Regulation on the organization and functioning of the National Commission in the field of equal opportunities between women and men (CONES).

The problem of gender violence and domestic violence. The thematic focus of the 2024 Gender Equality Index was dedicated to violence against women, presenting recent developments in policies and legislation regarding violence against women in the EU and Member States, emphasizing how the prevalence, severity, and disclosure of violence can vary among women depending on certain social factors, such as age, disability, migrant status, or the type of perpetrator of violence, including an analysis of data on public attitudes towards violence against women and exploring the links between public attitudes towards violence and levels of gender equality.

The EU faces a series of challenges that make gender equality a more relevant and urgent issue than ever, with implications for violence against women. Growing evidence shows that violence against women and girls intensifies during periods of crisis. The fact that millions of women in the EU continue to be exposed to serious forms of violence, including physical and sexual violence and femicide, remains an unacceptable form of gender inequality.

The 2024 Gender Equality Index Report examines recent legal and political developments across the EU and its Member States, presents findings from the EU survey on gender-based violence, includes an analysis of the extent of disclosed violence against women in the EU, and explores societal attitudes towards violence against women and public perceptions thereof, as well as the role of the mass media in shaping awareness of this violence.

Gender-based violence remains widespread, severe, and underreported throughout the EU. Violence against women in the EU is not just a social problem, but a human rights crisis, rooted in control, domination, and inequality. While the EU has taken strong legal measures, the fight for real progress requires urgent action from policymakers, civil society, and the public.

The first EU Directive on combating violence against women and domestic violence No.2024/1385 of the European Parliament and of the Council of May 14, 2024 [4], provides a comprehensive framework for the effective prevention and combating of violence against women and domestic violence at the EU level. The Directive strengthens existing measures and introduces new ones in areas such as: the definition of relevant offenses and sanctions, including the criminalization at EU level of certain forms of cyber violence (non-consensual sharing of intimate images, cyberstalking, cyberharassment), female genital mutilation, and forced marriage; the protection of victims and access to justice; support for victims; improved data collection; prevention; coordination and cooperation. The Directive establishes common legal standards in all member states, entered into force on June 13, 2024, and Member States have until June 14, 2027, to transpose it into national legislation.

The EU's accession to the Istanbul Convention (2023) strengthens commitments to prevent and combat violence against women and domestic violence. Despite this progress, five Member States (Bulgaria, Czechia, Hungary, Lithuania, and Slovakia) have not yet ratified the Istanbul Convention. This delay is largely driven by political opposition and anti-gender movements, which threaten progress. Moreover, while many Member States have National Action Plans to combat violence against women, their scope and effectiveness vary greatly.

The transposition of the EU Directive on violence against women by June 2027 will address many of these shortcomings, and the vast majority of the requirements of the Istanbul Convention will need to be integrated into national law, even for those member states that have not yet ratified the Convention.

Domestic violence is a consequence of gender inequality in that:

1) it reflects and perpetuates unequal power relations; domestic violence is often rooted in social and cultural norms that uphold male superiority and female subordination; abusers may use violence to maintain control and domination over their partners, thus reaffirming gender inequality in the relationship; society may subtly tolerate or even justify domestic violence through harmful gender stereotypes, such as the idea that men have the right to "discipline" their partners or that women should be submissive;

2) it limits women's autonomy and independence; the fear and intimidation generated by domestic violence can restrict women's freedom to make decisions, to work, to socialize, and to participate fully in public life; the abuser's control over financial resources, communication, and movement limits women's economic and social independence, making them dependent on abusive partners, which makes it difficult to leave abusive

relationships and perpetuates gender inequality;

3) it disproportionately impacts women; statistics show that women are disproportionately affected as victims, suffering more severe and frequent forms of abuse, including sexual violence and homicide; this reflects the existing structural gender inequality in society, where women are considered to have an inferior social and economic status;

4) it normalizes gender-based violence; when domestic violence is not adequately addressed and sanctioned, it creates a climate of impunity that normalizes gender-based violence, which can lead to greater tolerance of other forms of violence against women and girls in different spheres of life;

5) it hinders progress towards gender equality; domestic violence is a major barrier to achieving gender equality, as it undermines women's fundamental rights, limits their opportunities, and affects their physical and mental health; societies where domestic violence is widespread tend to have lower levels of gender equality in all areas; domestic violence is not just an individual act of aggression, but also a manifestation and a tool for maintaining gender inequality. Addressing and eliminating domestic violence are essential to building an equal and safer society for women and girls.

Domestic violence significantly influences the burden of household activities on women in several ways:

1) *control and coercion* – abusers may use control over household activities as a form of abuse and may sabotage women's efforts to share tasks or constantly criticize the way they perform their household duties, creating a climate of fear and dependence; abusers instrumentalize household activities to maintain power and control over women, ignoring their needs and circumstances;

2) *social isolation* – domestic violence often leads to the isolation of women from friends, family, and colleagues; this isolation deprives them of the emotional and practical support that could help them cope with the burden of household activities; abusers may restrict women's contact with others to maintain control and prevent them from seeking help;

3) *impact on physical and mental health* – women who suffer domestic violence often have physical and mental health problems, including injuries, chronic pain, depression, anxiety, and sleep disorders, problems that can make it more difficult for them to manage household activities, further increasing their burden; constant fear and stress can lead to physical and emotional exhaustion, affecting women's ability to cope with daily tasks;

4) *sabotage of economic opportunities* – abusers may prevent women from working or keeping their jobs through harassment, threats, or direct violence; this economic dependence makes women more vulnerable and less able to pay for external help with household activities (e.g., cleaning or childcare services); sabotaging educational or professional training opportunities also limits their chances of achieving long-term financial independence;

5) *lack of support and recognition* – in abusive relationships, women's efforts in performing household activities are often taken for granted and are not recognized or appreciated; this lack of validation can lead to feelings of devaluation and resentment, amplifying the emotional burden of housework; abusive partners refuse to participate in household chores, perpetuating the gender stereotype that these are the exclusive responsibility of women.

In essence, domestic violence exacerbates gender inequality in terms of household

activities by creating an environment of control, fear, and dependence, limiting women's autonomy and resources, and undermining their health and well-being. Addressing domestic violence is crucial to promoting a fair distribution of household tasks and achieving gender equality within households.

In a healthy and balanced relationship, household responsibilities are divided equitably between partners, taking into account each person's abilities, available time, preferences, health status, energy levels, and professional commitments.

By December 2024, all EU Member States had signed the Istanbul Convention, and the majority had ratified it. In recent years, there has been greater opposition to the Convention from anti-gender movements. In countries that have not yet ratified the Convention (Bulgaria, Czechia, Lithuania, Hungary, and Slovakia), the debate often focuses on the desire to protect the "institution of marriage between a man and a woman", as the movements consider the Istanbul Convention a threat to their values [5].

The Istanbul Convention defines violence against women as "a violation of human rights and a form of discrimination against women and shall mean all acts of gender-based violence that result in, or are likely to result in, physical, sexual, psychological or economic harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life" [6, p.3]. Domestic violence is described in the Convention as "all acts of physical, sexual, psychological or economic violence that occur within the family or domestic unit or between former or current spouses or partners, whether or not the perpetrator shares or has shared the same residence with the victim" [6, p.8].

The majority of EU States do not have specific laws on violence against women, as it is criminalized as part of other legal provisions, such as laws on domestic violence. Domestic violence is criminalized in all Member States, but not always through a specific legal provision. Most laws referring to this type of violence refer to family members and/or intimate relationships, including physical, sexual, and psychological abuse, although verbal psychological violence may be considered a less serious offense [7, p.9].

Although there is a European protection order for survivors of violence, in reality this measure has not always proven effective, depending on the response of the judicial and law enforcement systems [8].

The mass media is an institutional source of power and influence in the process of gender socialization [9], and media narratives can play a crucial role in shaping public perceptions of violence against women and influencing attitudes [10]. Mass media reports and narratives on violence against women can either perpetuate harmful stereotypes and normalize violence against women [11] or contribute to greater awareness and prevention [12]. Intimate partner violence tends to be significantly underreported in the mass media and is often reported in connection with isolated incidents rather than discussed in a broader social context [13]. The tendency of the mass media to report only the most serious cases of intimate partner violence, such as femicide, and to underreport the majority of less severe cases of violence against women leads to misperceptions of the prevalence and severity of violence against women among the public [14].

In general, across the EU, research highlights persistent problematic practices in the reporting of violence against women in the mass media, including sensationalism, victim-blaming discourses, the romanticization of violence, and the lack of recognition of its systemic nature [15].

Article 17 of the Istanbul Convention recommends the involvement of the private sector and the media in the prevention of violence against women and domestic violence [6]. It also encourages the media to define and adopt guidelines, as well as self-regulatory standards, to avoid perpetuating negative gender stereotypes and to promote a fair and non-sexist portrayal of women. European and international agencies have issued a series of recommendations and guidelines to better guide media professionals towards more ethical reporting of cases related to violence against women [16].

Through the Beijing Platform for Action, all Member States committed to promoting greater gender equality in the media [17], a commitment that includes four main components: decision-making, working conditions, gender-based violence, and gender stereotypes in the media [18].

All Member States have established regulatory authorities responsible for overseeing media coverage at the national level; more than half of them (16) have guidelines or recommendations for media professionals regarding the gender-sensitive portrayal of violence against women. Some of these guidelines have been developed by the regulatory authorities themselves or by independent associations or civil society organizations, and some regulatory authorities have adopted internal strategies to improve gender equality in their work.

The effects of gender inequality. Gender inequality begins in childhood and limits children's potential, disproportionately affecting the female gender; it has negative effects on children's health and development; it contributes to unemployment and poverty among women, and it has a profound effect on mental health: higher levels of stress, anxiety, depression, and post-traumatic stress disorder.

Conclusions. Gender equality is a fundamental human right that is violated by gender-based discrimination. Although Romania enshrines equality between men and women at the legislative level, and progress has been made in reducing gender inequality since the socialist period, in practice gender inequality has reached worrying proportions.

The causes that lead to the emergence and perpetuation of gender inequality are: stereotypes, mentalities, the culture that encompasses the mass media, religion, language, and education. Change must begin with overturning these stereotypes and the attitude people have towards gender inequality, which remains a closely monitored topic on the EU's agenda and an important objective of Romania's community policies.

In recent years, the EU has made significant progress in aligning its legal framework with international instruments. The adoption of key legal instruments, including the EU's accession to the Istanbul Convention and the adoption of Directive (EU) 2024/1385 on combating violence against women and domestic violence, has provided the EU with comprehensive tools to combat violence against women. The commitment to adapt and implement ambitious legislation to combat violence against women by EU institutions is largely reflected at the national level, even if significant differences between member states persist. The level of implementation of the Istanbul Convention varies across the EU. This is most visible in the significant disparities that exist in the availability and quality of services available to women who experience violence.

Societal attitudes play a crucial role in combating violence against women. Gender-sensitive media reporting can promote greater awareness of the systemic nature of violence against women and can encourage reporting by victims and witnesses. While Member States have established mechanisms to monitor media coverage, and guidelines

and codes of conduct are widely available to promote fair reporting by the mass media on issues related to violence against women, more efforts are needed to move beyond self-regulatory approaches and have a stronger impact.

Public attitudes are another key element of societal attitudes, likely to be a catalyst for achieving a society free from violence against women. Sexual or physical violence is generally considered unacceptable by the majority of the EU population. But several forms of violence, including financial control, hate speech, and the non-consensual sharing of intimate images, still gain acceptance from significant proportions of the EU population. Gender and age are important factors, with women systematically having lower levels of acceptance of violence against women than men.

Myths surrounding violence against women and victim-blaming attitudes are still widespread, indicating that the documented ideological divide between women and men regarding values, lifestyle, and political positions also applies to violence against women, a divide that tends to manifest in different opinions regarding gender equality and sexual and reproductive rights, attributed to the impact of lived experiences and worldviews.

In countries where gender equality is high, people are less likely to tolerate violence against women. Progress towards a gender-equal EU is essential for eradicating violence against women. Alongside efforts to fully implement the Istanbul Convention and the Directive on combating violence against women and domestic violence, advancing gender equality in care, facilitating women's participation in decision-making, and promoting gender-sensitive employment and social protection policies all contribute to building societies where the prevention and eradication of violence against women is a priority.

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INTERNATIONAL POLICE COOPERATION BY EXAMPLES OF THE REPUBLIC OF AUSTRIA AND THE FRENCH REPUBLIC

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Summary

While the legal side of international cooperation became relevant from an early age, the enforcement side of the laws and judgements rendered took several more centuries to develop. The idea of police services from different countries cooperating to combat crime emerged first after the liberal revolutions in the year 1848. The initial priority of international police cooperation was to combat drug smuggling and terrorism, but was quickly given further authority to assist national police forces in criminal investigations in other areas. The latest addition to international police cooperation is based on officer training, the exchange of best practices, and the donation of equipment. It stems from institutional cooperation, which has set the annual course, and it also draws on feedback from operational cooperation.

In an era of globalized crime, states cannot afford to remain isolated. Whatever cooperation is implemented, it will always be beneficial and reciprocal.

Keywords: international police cooperation, information exchange, law enforcement entities, liaison officers, joint operations.

Introduction. 1. *A brief overview of the History of international judicial and police cooperation*. Since humans first began settling in city states, which formed into states with a universally accepted authority, governed by laws, the desire for safety for the integrity of the person, their property and the maintenance of public order has been one of the most basic yet paramount needs of human needs. With the emergence of the first codified laws and set punishments for infractions, free of arbitrary decisions of a ruling elite, which applied universally, the desire for professional enforcement became more pressing. While for a long time it was sufficient to apprehend a suspect, who was delivered to a magistrate or judge, who in turn rendered judgement, which than was enforced, could be done usually a single person, there were little to no facilities to communicate with law enforcement entities in other parts of a country, let alone beyond it.

2. *The foundation of judicial cooperation in Europe*. With the coronation of Charlemagne on the 25th of December 800 by Pope Leo III in Rome, to the emperor of the Holy Roman Empire a new era of legal self-understanding was born. The spiritual successor of the Roman Empire, saw the formation of an empire by means of unification of several territories, ranging from small city states to vast kingdoms, into a single empire. While

at the formation laws were not yet written and by no means applicable throughout the empire, the need for them became more pressing in the following centuries, not only to prevent infighting within in the rulers of the territories, but also to regulate a separation of powers from between celestial and worldly law. Thus, the written codification of a common set of laws took until 1356 with the adoption of the golden bull which granted a rudimentary separation of power, predominantly between the clerical and worldly leaders, and also governed the methods of appellation and essentially provided subjects, the universal right to recourse in a second instance. While the provisions remained rather vague it required clarification, which was achieved at the imperial diet in Worms and saw the formation of two high courts, the Reichskammergericht, located in Wetzlar (amongst other towns) and the Reichshofrat in Vienna. Even though it required yet further reforms, it was the first time that there were to legal instances, whose responsibilities and judgements were universally applicable, enforceable, and binding. Thus, yet another important foundation in legal cooperation was laid between European nations.

3. *Separating police cooperation from judicial cooperation*. While the legal side of international cooperation became relevant from an early age, the enforcement side of the laws and judgements rendered took several more centuries to develop. Due to the industrialisation of society in the 19th century, which also saw the trans-national crime becoming more. The most significant development is indubitably the formation of INTERPOL. However, the path to probably the formation of the probably best-known law enforcement institution was rocky. The idea of police services from different countries cooperating to combat crime emerged first after the liberal revolutions in the year 1848. In response, the police president of the city of Berlin Karl Ludwig Friedrich von Hinckeldey requested his counterparts from the Kingdom of Hannover, the Austro-Hungarian Empire, the Republic of France, amongst other countries to contemplate the formation of a international police agency, resulting in the Dresden conference and the formation of the Police Union of German States, which was dissolved in 1866. After the assassination of Empress Elisabeth of Austria on the 10th of September 1898 by an anarchist and US President William McKinley on the 14th of September 1901, another attempt was made to share information between police services, resulting in the conference of St. Petersburg in March 1904, which generally regarded as the first international conference on combatting terrorism. In April 1914 the first international criminal police congress was held in Monaco and resulted in a conclusion that summarised the wishes of the delegates, including the creation of centralised and standardised records as well as a system of enforcing arrest warrants beyond the jurisdiction of the issuing entity and procedures for extradition of suspect. On the 7th of September 1923 the International Criminal Police Commission, consisting of 16 Nations from 3 continents was founded in Vienna and soon saw the first internationally posted bulletins for wanted persons. Before the Second World War, which saw the de facto cessation of activities by INTERPOL, the entity consisted of 58 Nations. Today INTERPOL has 196 members.

4. *The emergence of EUROPOL*. With the creation of the EU further strides were made in deepening the police cooperation within its Members States. As more countries joined, and after the fall of the iron curtain, this issue became increasingly pressing. With the declaration by the EC at the Luxembourg Summit in 1991 to establish a Central European Criminal Investigations Office, the idea of EUROPOL became tangible and with the Maastricht treaty entering in force on the 7th of February 1992, the Agency was born.

The initial priority was to combat drug smuggling and terrorism, but was quickly given further authority to assist national police forces in criminal investigations in other areas. In 2001 the first non-EU countries (Iceland and Norway) joined EUROPOL. With the co-operation agreement with the United States, in 2002 the Agency expanded its network beyond Europe and began to dispatch liaison officers to other countries. In 2009 SIENA was launched serving as a platform for information exchange between law enforcement entities. Today EUROPL has over 1.000 employees, 38 agreements with countries from 4 continents and dispatches over 200 liaison officers.

5. *The contribution of the Republic of Austria to international police cooperation*. The police cooperation in Austria with other countries is manifold. While Austria is an active member both within INTERPOL and EUROPOL and utilises the channels to further operative measures, it also dispatches 30 liaison officers in other countries through the Federal Ministry of the Interior. The variety of responsibilities is wide and not only consist of reporting security relevant developments, exchange of operative information, but also strengthening the cooperation and building capacities between Austria and the host country.

Examples of successful instances of police cooperation beyond the operational sphere would be the support given by the Austrian mountain police for their Romanian, Albanian and Georgian counterparts. Since the trainings were predominantly conducted in the host countries, the local liaison officers served as a hub for information exchange between all stakeholders.

6. *International Security Cooperation of French Republic*. France has two police forces, the National Police and the National Gendarmerie. Although they exercise the same prerogatives, these two police forces differ in many respects, such as their area of jurisdiction (highly populated areas for the National Police) and their status (the National Gendarmerie being an armed force responsible for police missions, the National Police a state police force).

As part of the internationalization of post-war crime, particularly terrorist crime, each entity created a criminal cooperation division within itself:

– The International Technical Police Cooperation Service in 1961 (National Police);

– The Sub-Directorate of International Cooperation in 1985 (National Gendarmerie).

In 2009, the two forces were merged under the leadership of the Ministry of the Interior. The duplication of international cooperation services blurred the coordination of exchanges between French and international services. The Directorate of International Cooperation was created in 2010 and became the current Directorate of International Security Cooperation in 2021.

France has decided to bring together operational, technical, and institutional cooperation activities under one umbrella, becoming the sole point of contact to and from France in matters of police cooperation. In order to establish an international network, the Internal Security Services were created, representing the DCIS worldwide and acting as a bridge between France and the host country. Located in 78 French embassies, these services are made up of gendarmes and police officers, responsible for cooperation between the respective Ministries of the Interior. These points of contact facilitate exchanges between all Internal Security stakeholders. This network covers more than 150 countries and has a 24/7 service allowing immediate exchanges with France. These services are headed by Internal Security Attachés, assisted by Liaison Officers and Inter-

national Technical Experts.

International police cooperation is divided, as previously mentioned, into three types of cooperation. The first concerns the operational aspect that is monitoring the country's security and ensuring the smooth exchange of criminal information between Police Services. This cooperation can extend to assisting investigators during joint judicial operations. This aspect varies depending on the country and the number of French agents deployed. Some European countries have French agents for each theme (Immigration, Organized Crime, Counterterrorism, Cyber), while other countries, such as the Republic of Moldova, have a single liaison officer working on all police issues.

The second cooperation concerns the institutional component. Supporting institutions, particularly in countries wishing to join the European Union, such as the Republic of Moldova, requires institutional support, both at the European level and from Member States, to establish priorities and necessary reforms. This support takes the form of twinning or study visits, for example. This component also includes funding research to implement the final component, technical cooperation.

This technical and largely bilateral cooperation, the latest addition to international police cooperation, is based on officer training, the exchange of best practices, and the donation of equipment. It stems from institutional cooperation, which has set the annual course. It also draws on feedback from operational cooperation.

International police cooperation therefore requires a clear understanding and in-depth knowledge of the country in which the officer(s) are operating. A relationship of trust must be established between officers while maintaining the discretion and professionalism necessary for police work. This relationship is adapted to each country and has a very specific purpose: to contribute to the fight against crime between countries.

7. *Role of international cooperation in the prevention and suppression of crime: the concrete example of the Republic of Moldova.* The general principle of police cooperation is reciprocity between countries. On first reading, this seems obvious and normal. But how can it be put into practice? How can we translate what is obvious into concrete actions between two countries?

Let's take the example of bilateral police cooperation between France and the Republic of Moldova, focusing on the three axes of cooperation, here is an example of implementation: the Republic of Moldova has a criminal pattern that differs from French crime, based on the "thieves in the law" model. This crime is transnational, operating in Europe and particularly in France. Initially, an operational approach will be implemented.

A study of criminal procedures will be carried out by the officer stationed in the Republic of Moldova and a connection between the police officers of the two countries will take place, primarily on an ongoing case. These exchanges will allow us to understand the work of the two countries and to see, in a so-called "win-win" relationship, what each service can bring to the other in its exchange of data. Whatever the outcome of this case, strengths and weaknesses are highlighted by the officer stationed in the country. This then gives him an axis of institutional and technical cooperation. A study visit or trainer training in a targeted area such as cyber or money laundering can then be proposed. At the same time, France is deepening its knowledge of Moldovan criminal groups. Repression is carried out in the initial case, while prevention is achieved through training and information sharing. This example is just one of the many possibilities offered by international police cooperation. And the list can be long and non-exhaustive, the only limit

being the degree of relationship between the countries.

In conclusion, although the presentation of the Franco-Moldovan model was brief, the main point is the importance of international police cooperation. In an era of globalized crime, states cannot afford to remain isolated. Whatever cooperation is implemented, it will always be beneficial and reciprocal. Whether it is the Austrian, or French model, we are evolving within a logic of cooperation that is essential to the security of our territories and that of our neighbours and partners. It is therefore important to place international police cooperation at the heart of relations between the Ministries responsible for security.

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THE EU AND SEXUAL CRIMES AGAINST CHILDREN

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Summary

The sexual exploitation of children is one of the most serious violations of children's rights, inflicting severe physical and psychological harm to the child. The trauma resulting from such abuse remains with the child consciousness for many years, often hindering or even completely preventing proper development. The scale of the problem, together with the serious physical and psychological consequences of sexual offences, has drawn the attention of the international community to the need for uniform standards for the protection of children and for the establishment of effective mechanisms to combat such practices.

The purpose of this article is to analyse the measures undertaken at the EU level in response to sexual offences against children. However, due to the extensive scope of the EU's activity in this field, particular emphasis will be placed on legislative initiatives. Consequently, the article was divided into three elements: firstly, the EU's competences in the field of combating sexual crimes against children; secondly, solutions adopted at the EU level; thirdly, only signaling the bodies involved in prosecuting crimes directed against children.

Keywords: sexual crimes, sexual exploitation, trafficking in children, EU law, crime prevention, criminal prosecution.

Introduction. The sexual exploitation of children is one of the most serious violations of children's rights, inflicting severe physical and psychological harm to the child. The trauma resulting from such abuse remains with the child consciousness for many years, often hindering or even completely preventing proper development. Despite these serious consequences and the efforts of law enforcement authorities at both national and supranational levels, the number of crimes continues to rise, and the scope of such crimes is constantly evolving.

They are often perpetrated by organised criminal networks that operate not only within a single country but also across the entire EU and even globally. It should be emphasized that in 2023 alone, the EU recorded 1.3 million reports of child sexual exploitation, including more than 3.4 million images and videos. Available data also show a significant global increase in such crimes, from 1 million reports in 2010 to nearly 35.9 million in 2023, including nearly 105.6 million images and videos [1].

The scale of the problem, together with the serious physical and psychological consequences of sexual offences, as outlined above, has drawn the attention of the international community to the need for uniform standards for the protection of children and for

the establishment of effective mechanisms to combat such practices.

As a result, under the auspices of the United Nations, two significant international instruments were adopted. The first is the so-called *Palermo Protocol* [2], which addresses the issue of human trafficking with particular emphasis on women and children. It supplements the United Nations Convention against Transnational Organized Crime [3] and should be interpreted in accordance with the provisions of that Convention. The second document is the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography [4], which supplements the Convention on the Rights of the Child [5].

The aim of the first protocol was to prevent and combat human trafficking, especially trafficking in women and children; to protect and assist victims of such trafficking, with full respect for their human rights; and to promote cooperation among State Parties to achieve these objectives. The second protocol, in addition to addressing child trafficking, established two further criminal offenses: child pornography and child prostitution [6, p.127-155].

Similarly, at the level of the Council of Europe, a number of documents have been adopted focusing on the fight against sexual crimes against children [7]. The most important of these is the Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse [8], which sets as its primary objectives the prevention and combatting of the sexual exploitation and sexual abuse of children; the protection of the rights of children who are victims of such exploitation and abuse; and the promotion of national and international cooperation against the sexual exploitation and sexual abuse of children.

The European Union has also undertaken actions aimed at protecting children from sexual offences. This includes both legislative activity directed at combating the sexual exploitation of children, as well as the establishment of a specialized institutional framework dedicated to the prosecution of crime, including sexual offences against children.

The purpose of this article is to analyse the measures undertaken at the EU level in response to sexual offences against children. However, due to the extensive scope of the EU's activity in this field, particular emphasis will be placed on legislative initiatives.

Consequently, the article was divided into three elements: firstly, the EU's competences in the field of combating sexual crimes against children, secondly, solutions adopted at the EU level, thirdly, only signaling the bodies involved in prosecuting crimes directed against children.

1. *The competences of EU*. The scope of the European Union's competences in the area of crime prevention and control has undergone dynamic and significant development, ultimately leading to the establishment of the so-called Area of Freedom, Security and Justice (AFSJ) [9, p.1]. This area is understood as a space governed by uniform legal standards that ensure the free movement of persons under conditions of security and justice. There is no doubt that this process began with the Treaty of Maastricht [10], which established the European Union on a three-pillar structure: economic cooperation, a common foreign and security policy, and the third pillar – justice and home affairs. Pursuant to the Treaty of Amsterdam [11, p.1-144], this third pillar was renamed and restructured to include police and judicial cooperation in criminal matters. With the establishment of the Area of Freedom, Security and Justice, the European Union also laid the foundations for the harmonisation of criminal law, particularly with regard to the criminalisation of offences such as organised crime, terrorism, and illicit drug trafficking [10, Art.31].

It should be emphasised that, under the relevant provisions, the EU was empowered to adopt framework decisions which were binding upon the Member States as to the re-

sult to be achieved, while leaving them discretion as to the form and means of implementation. It is worth noting that the Council made frequent use of this competence, adopting several dozen framework decisions concerning both procedural and substantive aspects of criminal law. The Council's activity frequently extended beyond the aforementioned areas, invoking the need to ensure a high level of security for EU citizens. A similar position was taken by the Court of Justice of the European Union (CJEU), which emphasised that the relevant provisions could not be restricted solely to the three specified areas, and that Article 31 para.(1) let.(e) should be interpreted broadly [12]. This line of reasoning provided the legal basis for the adoption of the first instrument in this field – the Framework Decision on combating the sexual exploitation of children and child pornography [13]. Pursuant to the provisions of the Treaty of Lisbon [14], the European Union has become a single legal entity under international law. The pillar structure was abolished, and the sources of Union law were unified.

Currently, the legal basis for adopting measures in the area in question is Article 83 of the Treaty on the Functioning of the European Union (TFEU) [15]. Pursuant to this provision, the European Union is entitled to adopt legally binding acts in the following areas: terrorism, trafficking in human beings and the sexual exploitation of women and children, illicit drug trafficking, illicit arms trafficking, money laundering, corruption, counterfeiting of means of payment, computer crime, and organised crime. It should be stressed, however, that these areas constitute an exhaustive list and are not subject to broad or extensive interpretation. However, pursuant to Article 83(1), third subparagraph, the Council may, acting unanimously and after obtaining the consent of the European Parliament, adopt a decision extending the list of areas of particularly serious crime. In accordance with the first subparagraph of Article 83(1) TFEU, directives in this area are adopted by the European Parliament and the Council through the ordinary legislative procedure. On the basis of this provision, the EU adopted the most important legal instrument in the field – Directive 2011/93/EU on combating the sexual abuse and sexual exploitation of children and child pornography, which repealed and replaced Council Framework Decision 2004/68/JHA [16, p.1-14]. This directive will be analysed in more detail in the following sections.

2. *Sources of law*. As noted above, combating the sexual exploitation of children falls within the scope of the European Union's legislative competences. The EU has consistently adopted a number of legal instruments aimed at addressing this phenomenon. The first measure was a Joint Action, followed by the Council Framework Decision on combating the sexual exploitation of children and child pornography, and subsequently Directive 2011/93/EU. Currently, the EU is working on a new legislative act – a Council Regulation laying down rules to prevent and combat child sexual abuse [17].

In addition to legal acts specifically focused on the protection of children from sexual abuse, there are also other instruments that contribute to this objective, such as the Digital Markets Act [18] and the Digital Services Act [19]. Furthermore, the European Union adopted the EU Strategy for a More Effective Fight against Child Sexual Abuse for the years 2020-2025 [20]. This strategy outlines eight key objectives for the Union: ensuring the full implementation of Directive 2011/93/EU; guaranteeing that EU law provides an effective response to child sexual abuse; identifying legislative gaps and areas requiring further regulation; mapping best practices and defining priority actions; strengthening enforcement efforts at both national and EU levels; establishing a European Centre to prevent and combat child sexual abuse; encouraging private sector initiatives to protect

children in their services and products; enhancing global child protection through multi-stakeholder cooperation.

Directive 2011/93/EU – similarly to the Optional Protocol to the Convention on the Rights of the Child and the Lanzarote Convention—adopts a holistic approach to the issue of combating sexual offences against children. Its provisions cover three main areas: substantive law, procedural mechanisms, and preventive measures.

2.1 Main assumptions of Directive 2011/93/EU. A fundamental concept defined in the Directive – and one that is essential for further analysis – is the term "child". In line with international instruments, the Directive defines a child as any person below the age of 18. However, it is important to note that the Directive also introduces the notion of the "age of sexual consent". This concept refers to the minimum age below which, according to national law, it is prohibited to engage in sexual activities with the involvement of the child. The age of consent is not harmonised at the EU level and varies among Member States. For instance, the age of consent is: 14 years in Belgium, Germany, Estonia, Hungary, Austria, and Portugal; 15 years in the Czech Republic, France, Croatia, Poland, Slovakia, Slovenia, and Sweden; 17 years in Cyprus and Ireland; 18 years in Malta. It is also worth noting that in Italy, Romania, and Finland, the applicable age threshold depends on the specific nature of the offence. Moreover, Greece has adopted differentiated ages of consent based on the type of sexual behaviour: 17 years for consensual heterosexual relations and homosexual relations between men, and 15 years for homosexual relations between women.

The first area addressed by the Directive concerns substantive criminal law. Firstly, the Directive establishes the obligation to criminalise a wide range of acts related to the sexual abuse and exploitation of children, whether committed online or offline. In total, twenty distinct offences are covered under Articles 2 to 7. These provisions also reflect the emergence of new forms of criminal conduct enabled by modern technologies. Notable examples include the online grooming of children (Article 6), sexual abuse involving webcams, and the online viewing of child pornography without downloading the content (Article 5, in particular paragraph (3). Secondly, the Directive introduces stricter criminal sanctions for sexual offences against children. Member States must ensure that the maximum penalties provided for in national law are not lower than the thresholds specified in the Directive – ranging from 1 to 10 years of imprisonment, depending on the seriousness of the offence (Articles 3 to 6).

In this context, Member States are also required to take into account a number of aggravating circumstances (Article 9). Furthermore, the Directive allows for the extension of limitation periods, enabling prosecution of certain offences even after the victim has reached the age of majority (Article 15(2)).

The second area addressed by the Directive concerns procedural measures. Within this context, two distinct categories of provisions can be identified. The first group is aimed at law enforcement authorities and seeks to enhance the effectiveness of investigative and prosecutorial efforts. The second group focuses on support for victims of offences. As regards the first category, the Directive provides for several important instruments, including: the obligation to ensure that investigations into offences related to the sexual abuse and sexual exploitation of children, as well as child pornography, may be conducted using investigative tools comparable to those employed in cases involving serious organised crime (Article 15(3)); measures enabling the identification of victims of such offences (Article 15(4)); the removal of professional confidentiality obligations that

may hinder the reporting of suspected offences by professionals whose primary responsibility is to work with children, such as educators or healthcare providers (Article 16).

Within the scope of the second group of procedural measures, the Directive imposes an obligation on Member States to adopt provisions aimed at preventing child victims from experiencing further trauma as a result of their involvement in investigations and criminal proceedings. This includes, among others: the establishment of special standards for interviewing child victims (Articles 18-20); the provision of assistance and support to victims as soon as there is reasonable suspicion that an offence has been committed (Article 18(2)); ensuring special protection for children who report abuse occurring within the family environment (Article 19(1)); guaranteeing access to assistance and support for victims regardless of their willingness to cooperate in criminal proceedings (Article 19(2)); safeguarding the privacy, identity, and image of child victims (Article 20(6)).

The third area addressed by the Directive concerns preventive measures. The Directive places particular emphasis on initiatives aimed at counteracting deviant and criminal behaviour. Three groups of provisions can be distinguished in this context. The first group relates to persons convicted of sexual offences against children. These provisions include: mechanisms allowing for the imposition of prohibitions on convicted persons from engaging in professional activities involving direct and regular contact with children (Article 10(1)); the right of employers to request information concerning convictions and any disqualifications from undertaking professional or organised voluntary activities involving direct and regular contact with children (Article 10(2)); the improvement of information exchange between national criminal records systems, particularly through the European Criminal Records Information System (ECRIS) (Article 10(3)); the obligation of Member States to develop intervention measures, such as treatment programmes for convicted offenders, or for individuals who fear they may commit such offences (Articles 22 and 24).

The second group of measures concerns education and prevention. These include: initiatives in the fields of education, awareness-raising, and training of officials who work with or for children (Article 23); the establishment of a mechanism for the mandatory assessment of all convicted offenders in order to determine the level of risk they pose and the likelihood of reoffending (Article 24(4)).

The third group of preventive measures concerns actions aimed at combating child sexual abuse offences committed via the Internet. The Directive obliges Member States to ensure the prompt removal of websites containing or disseminating child pornography when hosted on their territory, and to make efforts to obtain the removal of such content when hosted outside their jurisdiction (Article 25(1)).

In addition, Member States are required to adopt measures enabling the blocking of access to websites containing or disseminating child pornography within their territory. These measures may include public action or the implementation of industry-led self-regulation mechanisms (Article 25(2)).

2.2 Monitoring the implementation of the directive. As indicated above, the European Union, in exercising its competences in the field of criminal law, adopts directives – harmonising legal instruments that constitute one of the binding sources of secondary EU law. Directives are a specific type of legal act which require transposition into national law. Directive 2011/93/EU explicitly sets out how Member States are to confirm the transposition of its provisions. Pursuant to Article 27(2), Member States are required to communicate to the European Commission the text of the provisions adopted in national

law to implement the Directive. Furthermore, such provisions must contain a reference to the Directive itself, or such a reference must appear in their official publication.

In addition, the European Commission was obliged to submit to the European Parliament and the Council, by 18 December 2015, a report on the extent to which the Member States had implemented the Directive. With regard to Directive 2011/93/EU, Member States were required to adopt national measures across multiple domains, including: substantive criminal law – definitions of offences, levels of penalties, limitation periods, and liability of legal persons; procedural law – for example, provisions on extraterritorial jurisdiction and the participation of children in criminal proceedings; administrative and supplementary measures – including training for police officers and members of the judiciary; cooperation mechanisms – at both national and transnational levels, involving various stakeholders and institutions.

According to the data presented in the Commission's 2016 implementation report [21], Member States implemented the Directive through a total of 330 existing legal acts (negative implementation) and 300 new legal acts adopted after 2012 (positive implementation). However, only 12 Member States transposed the Directive within the prescribed deadline.

In summarising the effectiveness of the Directive, reference must be made to the position of the European Commission as expressed in the 2016 report. The Commission stated that "*the Directive provides a comprehensive legal framework which has enabled Member States to make significant progress in this area by introducing amendments to their criminal codes, criminal procedure codes and sectoral legislation, as well as by simplifying procedures, developing or improving cooperation programmes, and enhancing the coordination of actions taken at the national level*". Nevertheless, the Commission also acknowledged that "*the potential of the Directive has not yet been fully exploited – the scope of its impact could be significantly increased if Member States were to fully implement all of its provisions*".

3. *Specialised bodies established to combat crime, including child sexual exploitation at EU level.* It is also worth noting that, alongside the development of the legal framework for the protection of children, the European Union has established a complex institutional structure to combat the phenomenon under consideration at the EU-wide level. Particular attention should be given to nine decentralised agencies, namely: the European Union Agency for Law Enforcement Training (CEPOL), the European Union Agency for Asylum (EUAA), the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA), the European Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice (eu-LISA), the European Union Agency for Criminal Justice Cooperation (Eurojust), the European Union Agency for Law Enforcement Cooperation (Europol), the European Union Agency for Fundamental Rights (FRA), and the European Border and Coast Guard Agency (Frontex) [22; 23].

These agencies implement the EU's objectives within the Area of Freedom, Security and Justice, and the protection of children from sexual offences constitutes one of many areas of their operational focus.

However, from the perspective of this article, it is important to highlight the newly established agency that will be created under the above-mentioned regulation currently under legislative procedure at the EU level – the EU Centre on Child Sexual Exploitation (EUCSA), which will be headquartered in The Hague.

According to the provisions of the proposed regulation, the EU Centre on Child Sexual Exploitation (EUCSA) will be established as a decentralised agency with full organ-

isational and financial autonomy. Its primary objective will be to support and facilitate the implementation of the proposed regulation's provisions concerning the detection, reporting, removal, prevention of access to, and blocking of online child sexual abuse, as well as the collection and exchange of relevant information and expertise. The agency will also facilitate cooperation between relevant public and private actors in preventing and combating child sexual abuse, particularly in the online environment.

Pursuant to Article 43 of the proposed regulation, the tasks of the Centre will be divided into six areas. The first area concerns facilitating risk assessment processes, including supporting the European Commission in the preparation of guidelines for identifying abusive content; collecting and sharing relevant information, expertise, and best practices; and incorporating advice provided by the Technology Committee.

The second area relates to enhancing detection processes, including: issuing opinions on proposed detection orders; maintaining and operating databases of indicators; providing access to those databases for hosting service providers and providers of interpersonal communication services who have been issued detection orders; and making available detection technologies to such providers for the purpose of complying with those orders.

The third area concerns the facilitation of the reporting process. In this regard, the Centre is responsible for maintaining and operating databases of indicators, as well as assessing, processing, and, where appropriate, forwarding reports and providing feedback related to them.

The fourth area involves supporting the process of removing abusive content. This includes receiving removal orders submitted by representatives of individual Member States, cooperating with coordinating authorities and responding to their requests concerning proposed blocking orders, processing such blocking orders, informing victims and providing them with support, and maintaining updated registries of contact points and legal representatives of providers of relevant information society services.

The fifth area of activity consists in supporting the coordinating authorities and the European Commission in the performance of their tasks under the proposed regulation and facilitating cooperation, coordination, and communication in the relevant field. This includes: establishing and managing an online register listing the coordinating authorities and their contact points; assisting the coordinating authorities in the performance of their tasks; supporting the Commission, upon its request, in connection with its responsibilities under the cooperation mechanism; creating, maintaining and operating an information exchange system; assisting the Commission in the preparation of delegated and implementing acts, as well as guidelines adopted under the proposed regulation and providing the coordinating authorities, either upon request or on its own initiative, with relevant information necessary for the performance of their tasks under the regulation, including by informing the coordinating authority of the main establishment of a provider of any potential violations detected during the execution of other tasks by the EU Centre.

The sixth and final area focuses on facilitating the generation and exchange of knowledge with other Union bodies, coordinating authorities, and other relevant national authorities in order to ensure the full effectiveness of the regulation. This includes: collecting, recording, analysing, and sharing information; providing analyses based on anonymised and non-personal data; offering expertise on matters related to the prevention and combating of child sexual abuse online; and supporting the development and dissemination of research and specialist knowledge in this field, particularly regarding vic-

tim assistance. In doing so, the Centre will serve as a knowledge hub for evidence-based policy-making.

Conclusions and final remarks. The fight against child sexual exploitation is one of the European Union's highest priorities. The EU undertakes the necessary measures, which include both legal instruments and common strategies, as well as the development of a dedicated cooperation platform linking the law enforcement authorities of the Member States with specialised EU agencies.

The key legislative act addressing the issue of combating sexual offences against children is Directive 2011/93/EU, which replaced the 2004 Framework Decision. The Directive establishes minimum standards in three main areas: the criminalisation and penalisation of sexual abuse and exploitation of children, child pornography, and the solicitation of children for sexual purposes; procedural provisions aimed at improving investigation and prosecution mechanisms and preventive measures and the enhanced protection of victims.

With regard to institutional support, it should be emphasised that the EU has established a coordinated system for combating crime, including sexual offences against children. However, the most significant role will be played by the EU Centre on Child Sexual Exploitation (EUCSA), whose activities will focus exclusively on this specific issue.

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TACTICAL PARTICULARITIES OF WITNESS INTERVIEWS IN THE INVESTIGATION OF VIOLATIONS OF LABOR PROTECTION RULES

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Summary

The interviewing of witnesses in criminal cases concerning violations of occupational safety and health regulations presents a series of tactical particularities, determined by the technical complexity of work activities and the professional relationships existing among participants. The effectiveness of this evidentiary procedure depends on the ability of criminal investigation bodies to adapt interview techniques to the circumstances of each case, ensuring an environment conducive to the free and objective expression of witnesses. The choice of the timing and location of the interview, combined with the analysis of the conditions under which the event was perceived, contributes to increasing the credibility of the statements.

This paper highlights the importance of verifying the sources of information provided by witnesses, differentiating between accounts based on direct perception and those originating from indirect sources. It analyzes methods for objectively assessing the reliability of witness statements, including their comparison with other means of evidence or by conducting on-site verifications. Additionally, it addresses essential aspects related to formulating questions tailored to different categories of witnesses: eyewitnesses, workers, technical-administrative staff, as well as members of internal investigation committees or labor inspectors.

The conclusion emphasizes that the rigorous application of forensic principles in witness interviewing contributes to the substantiation of evidence and the determination of the legal liability of persons involved in the occurrence of workplace accidents.

Keywords: witness interviewing, forensic tactics, workplace accidents, occupational safety and health, criminal investigation.

Introduction. In the framework of criminal investigations, obtaining testimony from witnesses represents a fundamental procedural action, contributing significantly to uncovering the factual truth. Particularly in cases related to breaches of occupational safety and health standards, such interviews hold increased relevance, as they serve to elucidate both the technical factors and organizational conditions that have resulted in workplace incidents. The complexity of the professional environment in which these incidents occur, along with the existence of hierarchical or subordinate relationships, requires a carefully structured tactical approach capable of ensuring the collection of comprehensive, accurate, and unbiased testimonies.

In these types of investigations, conducting witness interviews requires a strict

adherence to established procedural methods, with careful consideration given to each witness's role within the workflow, their professional qualifications, and the particular circumstances in which they observed the incident. The moment and setting of the interview, along with the way questions are structured, can have a significant impact on the accuracy and relevance of the testimony obtained. Therefore, it is crucial that criminal investigation officers maintain an objective and professional approach, ensuring an environment that encourages witnesses to give truthful and comprehensive statements regarding the facts.

These particularities make the interviewing of witnesses in cases concerning workplace safety a complex activity, requiring technical knowledge, appropriate forensic tactics, and a thorough understanding of each witness's professional context. Such an approach ensures not only compliance with procedural requirements but also the collection of valuable evidence for resolving the criminal case.

Purpose of the research. The main objective of this paper is to highlight the tactical particularities of witness interviewing in criminal cases involving violations of occupational safety and health regulations. The analysis focuses on identifying effective methods for obtaining complete, objective, and relevant statements, taking into account the complexity of the work process, the specific nature of professional relationships, and the circumstances under which the investigated events were perceived. The paper aims to emphasize the importance of applying appropriate forensic tactics to strengthen the evidentiary process and establish the actual circumstances of incidents that occur in the workplace.

Methods and materials applied. In the context of investigating these offenses, the interviewing activity requires the application of appropriate methods designed to ensure the collection of objective and complete statements, given that professional relationships, the hierarchical position of witnesses, and external influences may affect the credibility of the information provided. The complexity of work processes, the technical nature of the activities performed, and the existing occupational risks necessitate a rigorous forensic approach, adapted to each specific case.

Various scientific research methods were applied in the preparation of this study, including both general methodologies and those tailored specifically to forensic science. The method of analysis and synthesis allowed for an examination of the specialized literature and the extraction of relevant aspects regarding the procedural conduct of criminal investigation bodies in witness interviewing. The comparative method was applied to highlight differences in tactics based on the categories of witnesses involved eyewitnesses, workers, technical-administrative staff, or representatives of control authorities. Logical methods, including both deduction and induction, were used in formulating conclusions and practical recommendations. Moreover, the research incorporated the case study approach by examining concrete examples drawn from investigative practices concerning workplace incidents. The observation technique was also utilized to assess the circumstances in which witnesses became aware of and interpreted the events in question.

The empirical material used in the research includes resolved criminal case files, internal investigation reports drafted by employers, documents issued by labor inspectorates, as well as domestic and international legal regulations concerning occupational safety and health. Doctrinal works and specialized studies addressing forensic methods

and techniques applicable in witness interviewing and in the administration of evidence in criminal cases involving breaches of labor protection rules were also taken into account.

The combined application of these methods and the use of relevant materials enabled the establishment of a unified methodological framework for the effective investigation of this type of offense, with a focus on appropriate tactics for obtaining reliable testimonies essential to establishing the circumstances of workplace accidents and determining the responsibility of the persons involved.

Discussions and results obtained. *Particularities of witness interviewing*. The tactics of witness interviewing in cases concerning violations of occupational safety regulations involve the application of methods designed to ensure the collection of comprehensive, truthful statements free from subjective influences. The complexity of the circumstances in which such events occur, combined with the technical specifics of the work processes, necessitates a careful, case-by-case tactical approach.

One of the key elements that ensures an effective interview is building a relationship founded on mutual respect and trust between the witness and the criminal investigator. Creating a favorable environment for dialogue requires the investigating officer to adopt a balanced and professional demeanor, adapted to the psychological profile of the interviewee and the professional context in which they perform their activities [4; 3, p. 523; 2, p. 13; 14, p. 425-426; 5, p. 159-192]. To facilitate this relationship, it is essential for the criminal investigation officer to possess relevant knowledge regarding the witness's professional activity, their position within the organizational structure, their level of professional training, and their relationships with other employees or persons involved in the incident. This information is useful in anticipating any reservations the witness may have or external influences that could affect the sincerity of their testimony. Hierarchical relationships or loyalties toward other individuals involved, which may influence the content of the testimony, should also be considered.

Another factor contributing to the efficiency of the interview is the selection of an appropriate time and location for conducting it. It is recommended that interviews be carried out as soon as possible after the incident, while the events are still fresh in the witnesses' memory and the risk of perception distortion from external factors is minimal. A relevant example is case [8], in which witness interviews were conducted immediately after the workplace accident. This approach allowed for a detailed investigation of the circumstances. The witnesses accurately described the technological process, the working conditions, and the actions of the participants, contributing to a clear reconstruction of events and the establishment of legal responsibilities.

In the case of eyewitnesses, conducting interviews at the scene of the accident can offer additional advantages, facilitating better clarification of the spatial and temporal elements related to the incident and allowing for the accurate reconstruction of the sequence of events. A concrete example is case [9], where the eyewitness interviews were conducted directly at the site of the workplace accident. This method enabled the criminal investigation officer to obtain a precise description of the equipment layout, the victim's position, and the location of other participants at the time of the incident.

The phases of the interview are essential in ensuring a correct and effective procedure, and adhering to their sequence contributes to obtaining clear and relevant statements. Forensic science recognizes three fundamental stages of witness interviewing: verifying identity and collecting personal information, free narrative, and the questioning

and answering phase [1, p. 100-103]. While an in-depth examination of these phases falls outside the objectives of this paper, it should be emphasized that they are entirely relevant when investigating offenses related to breaches of workplace safety regulations.

An essential tactical aspect in such cases involves confirming the origin of the information provided by the witness. Throughout the investigation process, it is crucial to establish whether the witness conveys facts they have personally observed or recounts information received from others. Making this distinction is vital for accurately evaluating the reliability and evidentiary value of the witness's statement. An illustrative case is represented by case [11], where establishing the origin of the information provided by witnesses proved essential for accurately reconstructing the facts. During the inquiry, the investigator discovered that certain witnesses referred to details they had not directly witnessed, but rather had acquired from secondary sources. This required additional analysis to clarify the veracity of their accounts. In contrast, eyewitnesses provided detailed and direct information regarding the work activities, technical conditions, and the behavior of participants at the time of the incident. This approach allowed the differentiation of high-evidentiary-value statements from those lacking direct relevance, ensuring a proper evaluation of evidence and supporting subsequent procedural decisions.

In certain situations, witnesses may be influenced by external factors or dependent relationships, which can affect the objectivity and sincerity of their testimonies. To counteract these influences, the criminal investigation officer must apply investigative tactics that encourage the witness's truthful conduct, explaining the importance of providing an accurate account of the facts and the necessity of establishing the truth in the criminal proceedings.

Additionally, during the interview, it is necessary to carefully evaluate the conditions under which the witness perceived the investigated event. Factors such as distance from the incident site, quality of lighting, ambient noise, or potential sensory impairments may influence perception and, consequently, the accuracy of the testimony. For this reason, the officer must determine precisely where the witness was located at the time of the incident, the specific activity they were engaged in, and any disruptive factors that may have affected their attention or perception. In a reviewed case [13], several witnesses reported that they did not directly observe the moment of the accident but instead heard a loud noise that prompted them to approach the scene. Some witnesses were located at a considerable distance, in areas where routine work activities, combined with the specific ambient noise of the construction site, could have diminished their capacity for clear perception of the event. These circumstances necessitated a meticulous analysis of the reliability of their statements and the extent to which they reflected the actual facts.

To eliminate perceptual or interpretative errors, when necessary, it is recommended to verify the witnesses' statements at the scene of the incident. This method allows for a detailed analysis of the positions of objects and individuals involved in the incident, facilitating an accurate reconstruction of the events. The use of technical means photographs, diagrams, sketches, or video recordings enhances the accuracy of this verification process and provides objective support for the witnesses' statements.

The formulation of questions posed to witnesses must encourage the recollection of details and minimize the influence of biases or other subjective factors. If the witness has previously participated in administrative inquiries or internal investigations, the criminal investigation officer must clarify whether their statements have been influenced by these

procedures. It is necessary to explain to the witness that any discrepancies between their statements provided at different procedural stages will not entail legal consequences for the interviewee.

By rigorously applying these tactical measures, the criminal investigation officer can obtain coherent, objective, and relevant statements that contribute to reconstructing the actual circumstances of the accident and establishing the legal liability of those involved. These methods are fundamental for strengthening the evidentiary process and ensuring compliance with forensic principles in the conduct of criminal investigations.

Specific questions to be addressed to witnesses. In the context of witness interviewing procedures conducted in criminal cases concerning violations of labor protection and occupational safety rules, an essential element is the adaptation of questions to the specific characteristics of each professional category or the degree of their involvement in the occurrence of the workplace accident. The formulation of questions must take into account the witness's position in relation to the investigated event, their perception of the circumstances surrounding the accident, as well as any potential hierarchical relationships or influences between the witness and other individuals involved in the criminal proceedings.

A key category of persons interviewed in cases concerning workplace accidents is represented by eyewitnesses. When conducting interviews with these individuals, it is essential to clarify specific details, including their precise location at the moment the incident occurred and the task they were performing at that time. Furthermore, it is necessary to assess whether their line of sight allowed for a clear observation of the event, or if certain factors—such as physical barriers or environmental conditions might have influenced their ability to perceive the situation accurately. Eyewitnesses should be asked to describe in detail what they observed before, during, and immediately after the accident, as well as their own reactions and those of other persons present at the scene. Information regarding the behavior of the victim, compliance with workplace procedures, and the use of personal protective equipment are also key points of the interview. Investigators should verify whether the protective equipment was appropriate and functional, and whether the victim responded to any audible or visual warning signals present in the work area. Furthermore, an analysis should be conducted concerning the victim's condition from the perspective of biological or physiological factors that may have influenced their behavior, such as extreme fatigue, any medical conditions, or the consumption of alcohol or toxic substances.

An illustrative example is provided by case [6], in which eyewitnesses accurately indicated their location at the time of the incident and the activities they were performing. They confirmed that the victim was not wearing the required protective equipment and that no functional warning signals were present in the area. Their statements were essential in reconstructing the circumstances of the accident. In another case [12], eyewitnesses stated they observed the victim ignoring safety procedures and working without adhering to regulations on the use of personal protective equipment. They described the reactions of those present immediately after the accident, confirming that the victim failed to respond to warnings from colleagues prior to the incident.

A second important category of witnesses consists of workers or operators who, although not direct witnesses to the accident, possess relevant information regarding working conditions and compliance with safety regulations in the area where the inci-

dent occurred. They can provide valuable details about the concrete organization of work processes, the implementation of occupational safety and health measures, and the actual effectiveness of periodic training provided to staff. It is important, during the interview, to establish whether the training sessions were carried out merely as a formality or if they were effectively implemented in practice, as well as to identify the individuals accountable for enforcing and supervising adherence to these safety protocols. Witnesses should also provide information on the existence of unsafe work practices, tolerance of deviations from established procedures, or instances where technical rules were disregarded to expedite the completion of work tasks. Additionally, investigators should inquire about the technical equipment available in the workplace: whether machines were equipped with functional protective devices, whether danger signs were visible and effective, or whether deficiencies existed, such as the absence of emergency stop mechanisms.

Within the same category of questions, it is recommended to obtain information about the victim's level of professional qualification and experience, whether they had been properly trained regarding the risks associated with their work, and whether documentation existed to confirm their technical preparedness before being assigned to carry out specific activities. These aspects are essential to determine whether the employer and other individuals responsible for workplace safety fulfilled their obligations.

In case [10], several workers were interviewed who were not present at the scene of the accident but were knowledgeable about working conditions in the sector where the incident occurred. They reported that the technical equipment frequently malfunctioned and that safety devices were incomplete or nonfunctional. They also mentioned that, in practice, employees received only formal training regarding safety regulations and that activities were often tolerated without adherence to legal procedures for labor protection. In another case [13], witnesses orkers from the same construction site where the accident occurred provided important details about irregularities present before the event. They stated that although internal regulations required the use of protective equipment, enforcement by management was lacking. Furthermore, the witnesses confirmed that hazard warnings were missing and that emergency stop mechanisms on machinery were nonfunctional. Occupational safety training was rarely conducted and lacked rigorous oversight to ensure its implementation.

A third category of witnesses is composed of personnel with technical-administrative responsibilities, such as engineers, technicians, section or workshop supervisors, and occupational health and safety specialists. These persons hold critical knowledge about the operational state of the equipment involved in the incident and the safety protocols that were in place. It is essential, during their questioning, to determine if the machinery was functioning in compliance with applicable technical regulations, whether there were any previously identified malfunctions, and if such problems had been communicated to the supervisory staff. Additionally, it should be established whether corrective actions were taken to remedy non-conformities or, conversely, whether work was allowed to continue under hazardous conditions.

A relevant example is the interview of a construction site supervisor in a criminal investigation related to a workplace accident on a construction site. During the interview, key issues were clarified regarding the condition of the work equipment used at the time of the incident and whether it met applicable technical standards. The site supervisor provided detailed information about the existence of known defects, how these were re-

ported to management, and the measures taken to address the identified deficiencies. From his statements, it was revealed that insufficient actions were taken to eliminate hazards, resulting in continued work under risky conditions, which contributed to the occurrence of the workplace accident [6]. In another case [12], an engineer responsible for equipment maintenance was interviewed. He stated that he was aware of repeated malfunctions in a lifting device used for handling heavy materials. Although these issues had been brought to management's attention, work continued without the equipment being repaired or removed from service. The witness confirmed that despite warnings, no remedial measures were ordered, leading to the occurrence of the accident.

The investigation must verify the existence of any internal directives or administrative orders that authorized work under hazardous conditions and identify the persons who issued them, as well as the manner in which these directives were communicated to employees. Witnesses holding managerial positions must explain how the supervision of hazardous activities was organized, who was responsible for monitoring compliance with safety measures, and to what extent internal controls were carried out prior to the incident. It is also essential to verify the conditions under which personnel involved in the execution of dangerous tasks were trained, whether this training complied with legal requirements, and whether documentation exists attesting to the verification of the workers' knowledge. In addition, it must be clarified whether the equipment was inspected and if official technical inspection reports confirm their operational condition prior to use. All this information allows for an evaluation of how the employer and the personnel responsible for control and supervision fulfilled their duties and contributes to establishing the circumstances that led to the workplace accident.

A distinct category of witnesses includes members of the internal investigation team (internal inquiry) or the person appointed by the employer for this purpose. These individuals may be human resources employees, company legal advisers, or other designated persons. They are required to provide detailed information regarding the conclusions reached following the internal examination of the accident, to specify whether the circumstances of the event were fully analyzed, and whether the real causes of the incident were determined. It is equally important to establish whether any inconsistencies existed between their conclusions and those reached by the criminal investigation authorities. Furthermore, these witnesses should provide detailed explanations regarding the methods used to gather evidence, the process of documenting statements from both witnesses and other involved parties, as well as confirm whether the procedures followed were in accordance with legal provisions and the organization's internal regulations. Special attention must be given to identifying any systemic deficiencies in the implementation and enforcement of occupational safety measures by the employer, which the internal investigation either identified or failed to detect. This information is essential to complete the evidentiary framework and to accurately assess the responsibilities of the decision-makers.

An illustrative example [7] concerns an internal investigation conducted by an organization into an incident resulting in temporary incapacity for work of an employee. During this investigation, the committee appointed by the employer identified multiple violations committed by the person in direct supervisory roles, who was responsible for organizing and monitoring workplace activities. The irregularities included the failure to properly prepare the work site, failure to ensure the necessary safety conditions for performing activities, and the failure to verify the use of both personal and collective pro-

tective equipment by subordinate staff. Furthermore, the investigation revealed that employees without mandatory additional training and authorization were allowed to carry out high-risk tasks. Moreover, the lack of direct oversight during the execution of tasks, combined with the delay in notifying upper management and the occupational safety department about the incident, contributed to the aggravation of the situation. The findings of the internal committee highlighted systemic failures in the employer's approach to enforcing occupational safety and health standards. These conclusions were subsequently integrated into the criminal investigation and served as key elements in determining the legal accountability of those implicated.

In addition to the categories of witnesses involved in workplace accident investigations, labor inspectors, as well as representatives of trade unions and other regulatory bodies, play a key role. They are responsible for providing information on inspections conducted either before or after the incident. In the course of their interviews, they are required to detail the results of the inspections carried out, the suggestions provided to the employer for remedying the detected shortcomings, as well as the specific actions taken afterward to create and maintain a work environment that aligns with occupational health and safety standards. These witnesses should also clarify whether serious deviations from legal requirements or deficiencies in technological processes were identified during inspections and whether there were instances in which the employer exhibited negligence or refused to implement the proposed corrective measures. The information thus obtained can be decisive in establishing the liability of those involved and in supplementing the body of evidence regarding the violation of occupational safety and health standards.

A relevant example is case [11], where a labor inspector was interviewed after investigating a fatal workplace accident that occurred during unauthorized work inside a sewer well. The inspector determined that those engaged in the work had not received proper training and were lacking the appropriate protective gear required for carrying out such tasks. Additionally, it was highlighted that the administrator neglected to implement essential risk prevention measures, which ultimately resulted in the fatality of the workers. Another significant example is case [10], where the National Food Safety Agency was involved in documenting a workplace accident. The agency's inspectors participated in the evaluation of working conditions and identified major deficiencies regarding food safety and the health of workers at an agro-food enterprise. Their report highlighted the absence of protective measures and a lack of control over work procedures in high-risk areas.

The questions formulated during witness interviews should be directed toward clearly establishing their involvement in the activities carried out prior to the accident, as well as the source of the information they report. It is essential for the criminal investigation officer to identify whether external influences, hierarchical relationships, or other subjective factors may affect the objectivity of the testimony. The aim of this approach is to obtain detailed, coherent, and relevant statements that can contribute to reconstructing the mechanism of the accident and establishing the legal liability of those involved.

Conclusions. The interviewing of witnesses in cases involving violations of occupational safety and health regulations requires a tactical approach adapted to the professional context of each witness, taking into account their position, hierarchical relationships, and potential external influences that may affect the objectivity of their testimony.

The timing and location of the interview are essential factors in ensuring the accuracy and veracity of the information provided by witnesses. It is recommended that interviews be conducted as soon as possible after the incident and, when appropriate, at the scene of the event.

Verifying the source of the witness's information is crucial to distinguish between direct perceptions and second-hand accounts. This distinction contributes to an accurate assessment of the credibility of each statement and to the strengthening of the evidentiary basis of the case.

The questions addressed to witnesses must be tailored according to their professional category and role in the work process. This ensures the clarification of the technical and organizational conditions under which the incident occurred and the protective measures that were implemented.

The rigorous application of forensic interviewing techniques plays a decisive role in establishing the actual circumstances of the workplace accident and in identifying the legal responsibilities of employers and other involved parties, thereby providing the necessary legal foundation for the proper resolution of the criminal case.

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EUTHANASIA: MORAL AND LEGAL DILEMMA

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Summary

Euthanasia is the practice of hastening the death of a hopelessly ill person who is suffering, with his or her consent, in a relatively painless way out of mercy.

In criminology, bioethics, and medicine, there are two polar approaches to euthanasia, where the moral and legal dilemma is: The first is focusing on the need to regulate the use of euthanasia. The second approach: No physician should be forced to participate in euthanasia or assisted suicide, nor should they be allowed to make a decision to do so. The legal argument in favour of this position is that no international legal document in the context of human rights defines the "right to die".

Keywords: euthanasia, right to die, human rights, bioethics, international law.

Introduction. Euthanasia – (from the Greek 'ε' - 'good' and 'θάνατος' - 'death') – the practice of hastening the death of a hopelessly ill person who is suffering, with his or her consent, in a relatively painless way out of mercy [1].

Methods and materials applied. By combining complementary methods (analysis, synthesis, induction) comprehensive knowledge about euthanasia is obtained.

Discussions and results obtained. The term 'euthanasia' was first used in 1605 by the English politician and philosopher Francis Bacon.

In the history of many nations, such as the ancient Greeks, euthanasia was a rational act for people who considered their lives to be useless. The fact that these people sought help from others to hasten their deaths was considered morally acceptable.

In the thirties of the twentieth century, the idea of euthanasia spread in Europe and the United States. In particular, the American Society for Euthanasia was founded in 1938 in the United States of America. In England, in 1935, a movement for its legalisation began, and the Voluntary Euthanasia Society was founded by such famous figures as George Bernard Shaw, Bertrand Russell and Herbert Wells. Despite the fact that the House of Lords rejected a law in 1936 that would have allowed euthanasia, it was common knowledge that it was actually practiced by doctors.

Among the famous people who were subjected to euthanasia was King George the V of the United Kingdom, who had been seriously ill for several years and, while in a coma, was 'put out of his suffering' by his doctor with the consent of his wife, Queen Mary. Also, Sigmund Freud, who suffered from an incurable form of cancer, passed away through euthanasia in 1939.

German Nazis discredited the humane side of the idea of euthanasia. In 1920, the book "Permission to Destroy Life, Unworthy Life" was published. Its authors, professor of psychiatry Alfred Gohe and law professor Karl Binding from the University of Freiburg, wrote

that "idiots have no right to exist, killing them is a righteous and useful act". The texts by Gohe A. and Binding K. probably influenced Hitler A., who later expressed similar ideas in Mein Kampf (1925). Further, in Nazi Germany, based on the ideas of "racial hygiene", forced euthanasia was practiced for children and adults with physical and mental disabilities [1].

"Mercy killing" was legalized in 1941 in Switzerland. In this country, the practice of "euthanasia tourism" by foreigners from countries where euthanasia is prohibited is relatively common.

In 1984, the Supreme Court of the Netherlands recognized voluntary euthanasia as acceptable, and since 1st April 2002, euthanasia has been permitted in the Netherlands. Euthanasia is also legalized in Belgium and Canada.

The practice of euthanasia based on the patient's will expressed in a living will is widespread in the United States and Western Europe today.

There are two main types of euthanasia: passive euthanasia (refusal of life-sustaining treatment) and active euthanasia (taking actions that cause painless death). Healthcare legislation in Ukraine prohibits both of these forms, and under criminal law, such actions are classified as murder [2].

Conclusions. In criminology, bioethics and medicine there are two polar approaches to euthanasia where the moral and legal dilemma is:

The first is focusing on the need to regulate the use of euthanasia. The lack of regulation or prohibition of euthanasia means that people suffering from a terminal illness cannot request euthanasia to end their suffering, as this entails criminal consequences for the person who fulfills the request. This leads to the actual existence of euthanasia in a latent form. Legal issues within this approach are considered mainly in the context of the development and observance of the legal procedure for euthanasia. A well-designed legal procedure for patient care, including the authorization of euthanasia only to doctors and the prior voluntary consent of the patient, would help ensure that a sick person dies with dignity, prevent abuse and protect the rights of doctors.

The second approach can be illustrated by the position of the World Medical Association (WMA). In the Declaration on Euthanasia and Physician-Assisted Suicide adopted by the 70th General Assembly of the WMA in October 2019, this international organisation of physicians "reaffirms its strong commitment to the principles of medical ethics and its unwavering respect for human life, and therefore strongly opposes euthanasia and physician-assisted suicide" [3].

No physician should be forced to participate in euthanasia or assisted suicide, nor should they be allowed to make a decision to do so. The Hippocratic Oath contradicts the idea of euthanasia.

The legal argument in favour of this position is that no international legal document in the context of human rights defines the "right to die".

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PRIORITIZATION IN CRIMINAL PROCEEDINGS: MAIN ASPECTS

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Summary

The article is devoted to the problem of prioritization as a main organize factor in criminal proceedings. The author formulates his vision of this phenomenon as the process of ranking the means of criminal proceedings being carried out on the basis of a certain set of adequate criteria in order to increase the efficiency of solving its tasks. It is proposed to consider the conditionality and manifestation of prioritization in criminal proceedings (PCP) in three aspects – axiological, technological and economic, where it is objectively a competitiveness or even conflict of certain elements in criminal proceedings.

The technological aspect of PCP is seen in two areas: the rational construction of a criminal procedural form that will ensure maximum efficiency of proceedings, in particular in the context of balancing private and public interests, and the gradual digital transformation of criminal justice as a modern requirement.

A special emphasis is made on the issue of priority in procedural activities as a guarantee of its legality and well-reasoned.

Within the economic aspect of PCP, the need for expanding the prosecutorial discretion in selecting which criminal cases to focus resources on is emphasized. This approach is almost revolutionary for the modern justice system, but it is justified given the state of "war transformation", the "survival" of the criminal justice system in wartime, and the intensification of the European integration process.

It is emphasized that the issue of PCP is in demand during any transformational processes of legislation and society, during the period of forced adaptation of social systems to new challenges.

Also, it is summarized the existence of a request to determine priority areas for the modernization of criminal proceedings, with the aim of accelerating and reducing their cost, and the corresponding revision of the criminal procedural form through the prism of criteria dictated by the challenges of the war period and the projected needs of transitional justice in Ukraine in the post-war period.

Keywords: prioritization, criminal proceeding, procedural decision, discretion, digitalization, human rights, justice.

Introduction. The effectiveness of activities is largely determined by the system of selected priorities. Of course, the issues of prioritization are relevant for the criminal process as a type of social technology. The approach to the problem of optimizing the field of criminal proceedings through the prism of prioritization is innovative.

Currently, the criminal procedure system is in a state of "war transformation", on the path of "survival" in conditions of war and the intensification of the European integration process in search of new optimal mechanisms for solving the tasks that have arisen in an emergency situation. It is no coincidence that the topic of updating the priorities of criminal procedural activities today is "with increased emphasis" in a number of political strategic documents. Thus, in particular, in the Comprehensive Strategic Plan for Reforming Law Enforcement Agencies as Part of the Security and Defense Sector of

Ukraine, approved by Order of the President of Ukraine dated May 11, 2023 No.273 [1] was emphasized the need to "expand the limits of the prosecutor's discretion in criminal proceedings to ensure the performance of the functions assigned to him, in particular at the initial and final stages of the pre-trial investigation, taking into account priority areas of combating crime".

At the national level, this issue is currently actively mentioned in the media, scientific publications, and political documents, mostly in the context of saving resources of criminal justice agencies: prioritizing criminal investigations, investigating the most important cases, including by allocating the most experienced employees for this purpose, directing more and better resources to priority goals, and therefore fewer resources to less important cases, etc. At the same time, in the scientific literature, issues of both prioritization among criminal proceedings (prioritization in the narrow sense) and a more general exposition of the issues of prioritization in criminal proceedings have not been specifically studied.

While we should note that prioritization among criminal proceedings, although an extreme importance and almost revolutionary means of optimizing the activities of criminal justice bodies, at the same time is only one aspect of the topic of determining priorities in criminal proceedings, which we will try to reveal systematically.

Methods and materials applied. The methodological basis of the study was a set of modern general scientific and special methods used in legal science. At the same time, first of all, the author proceeded from the fact that the system of methods should be associated with the recognition of the existence objectivity and the need for development of legal phenomena – prioritization in criminal proceedings.

The general level of methodology is represented by the method of materialist dialectics, which has not lost its relevance so far, as it requires comprehensiveness and objectivity to the knowledge of real phenomena, as well as their links with practical activities in criminal proceedings.

Thus, the dialectical method as a universal method of studying social and legal phenomena allowed stating that prioritization is a main organize factor in criminal proceedings. The dialectical method is based on such methods of information cognition as data synthesis and analysis, as well as abstraction and the principle of convergence from abstract to specific concepts. To generalise and develop a vision of the concept of prioritization in criminal proceedings a set of methods of theoretical cognition was used, which together with dialectical method form a system of research methodology. The system method allowed to consider a set of legal means to ensure the unity of prioritization in criminal proceedings as a system, the elements of which, being interconnected and interdependent, are used to solve a specific problem – ensuring the effectiveness of the criminal procedure and unity of judicial practice, which, in fact, is the integrative quality that characterises the very system of these tools. The method of abstraction was used to set out the legal positions of the ECtHR relevant to the issue of ensuring the balance of private and social (state) interests during criminal process. At the same time, all scientific research methods were used in interconnection and interdependence, which contributed to the comprehensiveness, completeness, objectivity of the study and laid the foundation for further scientific research of the analysed issues and professional scientific discussion aimed at finding and approving effective mechanisms for modernize the work of criminal justice agencies in emergency situations.

Discussion and results obtained. Prioritization in criminal proceedings is seen as a process of ranking the means of criminal proceedings being carried out on the basis of a certain set of adequate criteria in order to increase the efficiency of solving its tasks. PCP is a complex and multifaceted process that requires a balanced approach and consideration of many factors. An effective prioritization system ensures fairness, timeliness, and quality of criminal proceedings while rationally using criminal justice resources. To solve the task, first of all, it necessary to determine the main subject sections of PCP, within which objectively there is a competitiveness or even conflict of certain elements in criminal proceedings: axiological, technological and economic aspects.

Axiological aspect. The need for PCP is primarily due to the axiological competitiveness of the main strategic vectors of criminal procedure. At the global level, the priority in criminal proceedings in a democratic society is the person, his rights and freedoms, which determine the content and direction of any state activity (Art. 8 of the Criminal Procedure Code of Ukraine (CPC)). The anthropological nature of the focus of criminal proceedings also determines its goal – a fair (in material and procedural aspects) resolution of the criminal-legal conflict, which in its essence is a litmus test of modern procedure and distinguishes it from the soviet process. At the same time, the achievement of such a goal occurs through the systematic implementation of objectively interconnected tasks defined in Article 2 CPC, which are essentially strategic directions for the implementation of criminal procedure. Likewise, such directions are "guarded" by a certain legal value – a legally significant interest and therefore have a certain axiological dimension. Given the a priori conflict of private (even legal), state and public interests, as well as the possible contradiction of interests of participants within each group, problematic situations often arise in criminal proceedings.

At the same time, the purpose of modern criminal process should be seen as a certain compromise, achieving a balance between public, state and personal interests.

While the dominance of state interests leads to manifestations of accusatory bias, excessive expansion of the rights of participants in the process leads to an unjustified narrowing of the capabilities of criminal prosecution bodies to solve the crime, and therefore ensuring the rights of persons affected by the crime (in essence, the same participants). However, no matter how attractive the term "balance" may sound, the mechanism for ensuring it precisely involves giving preference to something over something in a specific legal situation (determination of priorities). To avoid legal conflicts of different interests, the legislator in some cases gives priority to ensuring state interests, in particular, regarding the operational investigation of a crime despite a certain restriction of the constitutional rights of the individual (for example, the institution of an urgent search). In other cases, on the contrary, priority is given to ensuring the rights of the individual over the interests of society as a whole by creating certain difficulties for the its implementation (for example, a complicated procedure for collecting evidence through the institution of admissibility).

Withal, we fully agree with Titko I. that "...it is not possible to single out a certain sphere of criminal proceedings in which only private or only public interest would prevail, if only on condition that such a sphere would be quite narrow. It seems that no single type of criminal proceedings can be named (proceedings in the form of private prosecution are no exception), where in its pure form only one type of interest will prevail" [2, p.99].

The issue of priority in criminal proceedings is always particularly relevant in the

context of those institutions where the conflict of private and public interests is particularly acute, such as when regulating the limits of discretion, publicity, adversarial nature, the mechanism for calculating the terms of pre-trial investigation; the grounds and procedure for choosing measures measures of securing the criminal proceedings, for assessing the legality of secret investigative actions; the design of restorative justice procedures; the search for the optimal model of cassation filters, etc.

At the same time, the integration indicator of axiological PCP at the systemic level is coherence and mutual compensation, which is based on the concept of "Pareto optimum" – any improvement in the position of one element will lead to a deterioration in the position of another; in criminal proceedings, every change in the law either expands the boundaries of interference in the private sphere or narrows the discretion of state authorities. The issue of balancing the disproportions of competing interests in criminal proceedings is one of the "most popular" in the case law of the ECHR. Thus, in particular, in the context of the non-absolute nature of the right of an individual to disclose necessary evidence, the European Court notes that "...in a particular criminal case there may be competing interests, such as national security or the need to protect a witness who may be subject to prosecution, or the preservation of the secrecy of police methods of solving crimes, and these interests *must be balanced against the rights of the accused*. In certain cases, it may be necessary to withhold certain evidence from the defence in order to protect the fundamental rights of another person or an object of particular public importance. However, only those measures restricting the rights of the defence which are strictly necessary are legitimate under Article 6 § 1 (Van Mechelen and others v. the Netherlands, 1997, § 58; Paci v. Belgium, 2018, § 85). Furthermore, in order to guarantee the accused a fair trial, any difficulties caused to the defence by restrictions on his rights *must be adequately compensated* in the course of the proceedings by the judicial authorities (Rowe and Davis v. the United Kingdom [GC], 2000, § 61; Doorson v. the Netherlands, 1996, § 72)" [3, p.42].

A pertinent illustration of the balancing of interests is the observation of the ECHR in the context of the institution of absentia proceedings, such as that "the impossibility of conducting a trial in the absence of the accused may paralyze the conduct of criminal proceedings, as this may lead, for example, to the destruction of evidence, the expiry of the limitation periods for criminal prosecution or miscarriage of justice (Colozza v. Italy, 1985, § 29). ..However, although proceedings conducted in the absence of the accused are not in themselves incompatible with Article 6 of the Convention, a denial of justice occurs when a person convicted in absentia is unable subsequently to obtain from the court who tried her case, a re-examination of the merits of the charges, both in law and fact, unless it was established that he had waived his right to appear before the court and defend himself, or that he had intended to evade trial (Sejdovic v. Italy [GC], 2006, § 82)" [3, p.65].

Limiting ourselves to the examples given (because they can be found in almost every decision of the ECHR in the context of certain institutions of criminal proceedings), let us point out that prioritization in its substantive sense is not always perfect, as signaled by certain systemic markers, such as legislative gaps, unreasonably broad discretion of state bodies, differences in judicial practice, etc., which negatively affects legal certainty.

On the other hand, even the perfect procedural form is not something permanent. As objective are dynamic socio-political changes, so obvious is the need for its systematic revision with the aim of refragmentation. A clear illustration of this is the significant shift

in priority in criminal proceedings towards public and state interests caused by our state being in conditions of aggressive war. The indicated issue requires separate consideration, here we will only note that such a trend, despite its objective justification, carries the risk of exaggerating the restriction of the basic procedural guarantees of the participants in the process and the emergence of a significant imbalance with a bias towards ensuring the public interest in criminal procedural legislation. The above requires doctrinal understanding in order to formulate compensatory mechanisms, preempting an appeal to the European Court of Human Rights (ECHR) regarding the violation by our state of conventional human rights and freedoms.

The next aspect of the PCP is related to the technological nature of criminal proceedings (*technological aspect*). The evolution of the understanding of the term "technology" from purely streamlining the material production process to a method of rational organization of any goal-oriented social activity determines the possibility of using this concept in criminal proceedings as a type of legal activity aimed to resolve a criminal legal conflict.

The technological aspect of PCP is seen in two dimensions. First, it is the rational construction of the criminal procedural form, the selection of the most effective advanced regulatory mechanisms and structures (means) that will ensure maximum efficiency of the proceedings, in particular in the context of balancing private and public interests.

For example, in the context of the competition of public interests – state security and ensuring the rights of the individual when applying measures of procedural coercion in the case of Chahal v. the United Kingdom, the ECHR made the following issues: "The Court recognizes that in cases where state security is at stake, there are situations where the use of confidential materials cannot be avoided. However, this does not mean that state authorities become beyond the control of national courts immediately after these authorities recognize that the case concerns national security or is related to terrorism. There are technologies that allow, at the same time, to take into account the legitimate need of security agencies to keep secret the methods and sources of origin of operational information, and, on the other hand, take into account the need to carry out the judicial procedure in accordance with the requirements of fair trial" [4]. The above example clearly demonstrates the organic relationship between the essential issues of constructing a criminal process (balance of interests) with the technological or procedural aspect, the fundamental need to give priority to such legal remedies that will maximally balance opposing interests.

In turn, the instrumental section of criminal proceedings can be considered in 2 planes: material and procedural. If the material plane of the instrumental component of criminal proceedings is essentially the entire set of its legal means, then the procedural component is reduced to determining the sequence of implementation of such legal means during the criminal procedure. Exactly consistency "is a rather important parameter of the characteristics of any process, because it is the very essence of the procedure, which is inherently dynamic... Consistency is the substantive quality of the procedure, because it is in it that the systemic and structural construction of the criminal process is implemented" [5, p.10].

In turn, the sequence of criminal procedural activities implies the order of carrying out procedural actions and making procedural decisions. Moreover, such order is determined, first of all, by the staged construction of criminal proceedings. Although the

staged nature is not perceived terminologically by the CPC, it is actually and regulates the course of procedural activity in time or determines the sequence of procedural actions in a way that prevents the skipping of the previous stage.

Another aspect of the sequence in criminal procedure is reduced to the sequence of performing procedural actions and making procedural decisions within a certain stage.

Taking into account the objective impossibility of predicting the entire set of procedural actions and decisions that must be performed and adopted in a specific proceeding, the legislator in one way or another sets general criteria for their sequence and therefore priority.

One of the means of streamlining the sequence of procedural activities is the normative algorithmization of certain procedures aimed at solving a specific task. For example, the algorithm of announcement of a wanted person can be rearranged as follows: summoning a person by an investigator, prosecutor → proper notification of the person → taking measures to establish his location → proper notification of the person → making a decision to announce of a wanted person → entering relevant information into the Unified Register of Pre-Trial Investigations (Art.281 CPC).

However, in practice, competition between certain procedural actions and decisions often arises precisely in terms of their priority adoption or implementation. Given the direct uncertainty in the law, such situations are resolved based on the systemic and functional interpretation of the norms of criminal procedural legislation. For example, if there are grounds for suspending proceedings and closing it, the relevant procedural decisions become competing, mutually exclusive decisions, the difference between which is that in the first case, procedural activities are suspended for a certain period of time, and in the second, they are finally terminated.

Given the substantive interpretation of the norms of the CPC, if there are grounds for making both one and the other decision, the decision to close the criminal proceedings has unconditional priority over it suspension. After all, if there are grounds for closing, the criminal proceedings cannot be suspended, since this directly contradicts the provisions of para.5 Art.28 CPC and para.1 Art.283 CPC, according to which a person has the right to have the case against him considered in court as soon as possible or to have them terminated by closing the proceedings. In addition, this contradicts the requirements of para.2 Art.280 CPC, which obliges the investigator to perform all procedural actions that are necessary and possible before the suspension of the pre-trial investigation.

An example of setting criteria for the order of procedural actions at the horizontal level (priority among criminal proceedings) is the imperative requirement of the law regarding the priority (urgent) conduct of criminal proceedings against a person held in custody and a juvenile person (para. 4 Art.28 CPC).

Of course, in practice there are also informal criteria for determining both the nature and sequence of procedural actions and decisions necessary for a specific proceeding. Thus, the effective implementation of a pre-trial investigation is based on a significant "credit of trust" of the pre-trial investigation body in building its strategy within the limits set by law, in accordance with the specific circumstances of the case. For example, when determining the priority among procedural actions, investigators are guided by forensic methods of investigating crimes, taking into account typical investigative situations, etc.

Another aspect of technological PCP is seen in the gradual digital transformation of criminal justice as a requirement of modernity. As Loboyko L. aptly emphasized "...tech-

nology, as we know, must be advanced in order not to lag behind civilization. If everyone is in favor of using advanced technologies in the economy, then why not introduce them in the criminal process?" [6, p. 79].

In this sense, the choice of digitalization of criminal proceedings as one of the main vectors of transformation of criminal procedural legal relations is due to a multitude of positive expectations. These expectations are multidirectional and have value both for ensuring guarantees of a fair procedure (in particular, the right of access to justice, transparency, speed and efficiency), and in the context of an integral public interest in increasing the efficiency of the activities of the subjects of criminal proceedings in solving their tasks (in particular, as a way of providing pre-trial investigation bodies with new opportunities to solve a crime, identify the person who committed it, its location, acceleration of proceedings through the use of videoconferencing, procedural economy, etc.). For example, the main advantages of electronic criminal proceedings include: increasing the efficiency of the work of all subjects of criminal proceedings when using IT technologies and technical means; simplification and transparency of procedural activities, improving coordination between all subjects of criminal proceedings; the possibility of converting paper criminal proceedings into digital format; ensuring the administration of justice in extraordinary conditions [7].

The positive effects of the digitalization of the justice sector were detailed by Consultative Council of European Judges (further – CCEJ) in Opinion No.26 (2023) of Consultative Council of European Judges (CCEJ) "Moving forward: the use of assistive technology in the judiciary": Society's use of technology will continue to evolve, and courts and the judiciary must keep pace with such developments. Among the most important expectations from the digital transformation of justice is increasing the security of a person's access to justice as a component of the right to a fair trial. After all, it is precisely the promotion of compliance with the standards of the rule of law, as well as the implementation and respect for fundamental human rights that is the central goal of using digital technologies in justice.

The impetus for the intensification of the digitalization of the field of justice in Ukraine is the chosen vector of European integration, which necessitates the adaptation of national criminal procedural legislation to the norms of EU law. In accordance with a number of policy documents of the Council of the EU, it is the comprehensive strategy for the digitalization of the criminal justice system that is put on the agenda for the transformation of justice in the EU countries, which fully corresponds to the definition of digital transformation as one of the EU priorities [8].

However, taking into account the intrusive nature of criminal proceedings regarding human rights and freedoms, the introduction of digital technologies into such an area must be controlled and balanced, taking into account the potential or probable risks associated with digitalization, hidden dangers for legally protected values.

Economic aspect of PCP is related to the objective need to determine priorities among criminal proceedings (PCP in the narrow sense or PCP horizontally). Today, according to the concept of the CPC, state bodies are obliged to conduct criminal proceedings on all facts of criminal offenses registered in the Unified Register of Pre-Trial Investigations. Any selectivity is made impossible by the provisions of Article 2 CPC, which requires a prompt and simultaneously high-quality investigation of each case. However, the number of criminal proceedings that the criminal justice system can effectively process in a given

period, using available resources, is limited. The above is increasing by the additional narrowing of the resource base due to martial law, budget restrictions, and staff shortages, while the overall workload is increasing due to the increase in the number of criminal cases, in particular, cases of war crimes.

As M. Pashkovsky notes, unlike the Criminal Procedure Code of Ukraine, foreign legal acts regulating criminal proceedings, as a rule, grant significant discretionary powers to the prosecutor, if not at the stage of entering information about a possible criminal offense, then at the stage of initiating criminal prosecution (notification of suspicion or drawing up a bill of indictment). At the same time, the USA has one of the most developed and differentiated systems of prioritizing criminal proceedings, given the considerable discretion of prosecutors in this area. Case prioritization policies are also used in the activities of international judicial bodies, for example, the ECHR. This approach has allowed to distribute the workload and make the ECHR's influence on the state of human rights observance in the COE more effective. Prioritization rules also applied in ad hoc international criminal tribunals [9, p.82].

However, the lack of clearly defined criteria for selecting criminal cases to which resources will be directed first creates corruption risks, can lead to professional conflicts, violations of victims' rights, and makes it impossible to assess the rationality of resource use and its predictability. This makes the allocation of resources dependent on subjective decisions.

Therefore, the introduction of transparent prioritization among criminal proceedings requires not only departmental guidelines, but also appropriate legislative decisions. First of all, this concerns the regulatory correction of the tasks of criminal procedure. Indeed, in the doctrine of criminal procedure, there is fair criticism of the normative requirement of quick and at the same time expected high-quality criminal proceedings due to its ideological "coloration" and the impossibility of its real implementation, as well as the lack of correlation with the purpose of resolving the criminal conflict, including through the use of celerant proceedings.

Conclusions. Prioritization in criminal proceedings is a process of ranking the means of criminal proceedings being carried out on the basis of a certain set of adequate criteria in order to increase the efficiency of solving its tasks. PCP is a complex and multifaceted process that requires a balanced approach and consideration of many factors. A systemic approach to PCP will not only optimize the allocation of limited resources, but also ensure greater fairness and efficiency of the criminal process, reduce corruption risks, and increase public trust in the criminal justice system.

The above forms a request for, first, determining priority areas for the modernization of criminal proceedings, with the aim of accelerating and reducing their cost, and second, reviewing the criminal procedural form through the prism of criteria dictated by the challenges of the war period and the projected needs of transitional justice in Ukraine in the post-war period.

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LEGAL PROTECTION OF THE POLICE OFFICER AGAINST PSYCHOSOCIAL RISKS IN THE CONTEXT OF CRIME PREVENTION

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Summary

In the current context, marked by the increasing complexity of the criminal phenomenon and the diversification of professional risks, the issue of legal protection of law enforcement and public security is of strategic importance. On the front line of defending public order and national security, the policeman is exposed not only to physical dangers, but also to legal and administrative pressures. A legitimate intervention can become the subject of a dispute at any time, and an operative decision can generate multiple interpretations. For this reason, it is essential that law enforcement and public safety benefit from a robust, coherent and up-to-date legal framework that provides them with support in the face of professional risks and legal liabilities.

Keywords: policeman, legal protection, material liability, GEO no. 82/2024, Law no. 360/2002, occupational safety and health, OSH, MIA Order no. 21/2025, crime, professional risks, Police Statute.

Introduction. In the context of a constantly changing society, marked by the rapid evolution and diversification of criminal phenomena, the role of the police officer becomes increasingly complex and exposed to multiple risks. This paper aims to analyze in depth the need to strengthen the legal protection of police officers in Romania, both in the face of physical dangers and in the face of psychosocial, legal and administrative pressures to which they are subjected in the exercise of their professional duties.

In order to better understand the current challenges and to highlight possible solutions, we will examine the Romanian legislative framework, including the recent amendments introduced by G.E.O. no. 82/2024 and MIA Order no. 21/2025. The paper also conducts a comparative analysis with the legal protection systems of police officers in the United States and other European countries, thus identifying good practices and effective protection mechanisms that could be adapted and implemented in the Romanian context.

Through this approach, we aim to underline the importance of a robust and up-to-date legislative framework, necessary not only to protect police officers, but also to strengthen citizens' trust in the institutions responsible for ensuring public order and safety. Thus, our research becomes relevant not only for legal and public security specialists, but also for political decision-makers and civil society, contributing to the improvement of working conditions and the efficiency of police activities in Romania.

Content. **I. Legislative foundations regarding the legal regime of police officers' liability**.

1. Law No. 360/2002 on the Policeman's Statute [1] represents the legal basis of the police officer's career, regulating in detail his rights and obligations, service relationships, forms of responsibility, as well as institutional control mechanisms. In the context of combating crime, Law no. 360/2002 establishes the essential guarantees regarding the exercise of police duties, conferring on the police officer a series of fundamental rights, such as: the right to self-defense, the right to protective equipment, the right to legal assistance and the right to adequate working conditions. At the same time, the law rigorously regulates the mechanisms of disciplinary and material liability, ensuring a balanced framework between the exercise of authority and the assumption of responsibility.

2. GEO No. 82/2024 for amending and supplementing Law no. 360/2002 [2] represents a major step in strengthening the legal protection of police officers. It introduces the reimbursement of legal aid expenses if the police officer is the victim of an outrage or a party to a lawsuit derived from the exercise of his duties. It also limits material liability in cases where the damage is the result of an action in the interest of the service, thus providing a shield against administrative abuses [8]. These amendments respond to the real needs of police officers and reflect the evolution of the legislation towards a more protective and balanced framework [9].

One of the main provisions introduced by GEO no. 82/2024 is the right of police officers to benefit from the reimbursement of legal aid expenses in certain situations:

a) *Criminal and/or civil trials*: Police officers against whom criminal or civil trials are conducted for acts committed in the exercise of their duties have the right to reimbursement of legal aid expenses;

b) *Cases of outrage*: Police officers who are injured in a criminal trial for the crime of contempt also benefit from the reimbursement of legal aid expenses.

The settlement covers only the amounts actually paid as fees for the chosen lawyer and does not include other costs associated with the trial [11], such as those for the administration of evidence. The maximum settlement ceiling is the equivalent of an average gross salary used to substantiate the state social insurance budget. In order to implement this provision, the Ministry of Internal Affairs has developed specific rules detailing the settlement procedure and the related conditions [10].

Regarding the clarification and regulation of the material liability of police officers for the damages caused to the patrimony of the unit or of the Ministry of Internal Affairs, Order no. 21 of 3 February 2025, which details the manner of establishing and recovering damages, as well as the investigation procedure [12].

3. MIA Order No. 21/2025 on the application of the material liability of police officers [3] operationalizes the provisions of GEO 82/2024, clarifying the procedure for establishing material liability, the conditions for exemption and the limits for recovering damages. It is an essential tool in the delimitation between fault and assumed risk, between human error and legitimate exercise of the function. This order brings more coherence and fairness to the accountability assessment process, reducing the risk of police officers being held abusively liable for acts committed in the exercise of duty [13].

Procedure for ascertaining and recovering damages. According to Art. 2 para. (1) of the Order, the policeman has the obligation to defend the patrimony of the unit and of the MIA. In the event of damage, the head of the unit is responsible for finding and recovering it, based on an administrative investigation carried out by a commission appointed for this purpose. If the police officer recognizes the damage, he can opt for voluntary

coverage of it through a payment agreement. In the event that the police officer does not recognize the damage or does not cover it, the head of the unit may notify the competent administrative court to establish material liability.

Conditions of material liability. The Order establishes that the material liability of the policeman can be engaged only if the following conditions are cumulatively met:

• Existence of material damage: The damage must be real, certain and assessable in money;

• Unlawful act: Committing an action or inaction contrary to legal provisions or service obligations;

• Guilt: The unlawful act must be committed intentionally or culpably (negligence or recklessness);

• Causal relationship: There must be a direct link between the unlawful act and the damage caused;

• Service report: The policeman must have been an employee of the Ministry of Internal Affairs at the time of the damage.

Cases of exemption from material liability [14]. The Order provides for the situations in which the policeman is exonerated from material liability, according to Art. 63^3 para. (1) of Law no. 360/2002:

• Damages caused in the exercise of job duties, if the actions were carried out within the limits of the law and without guilt;

• Damage resulting from normal risk of service;

• Damages caused during interventions at urgent events, in compliance with legal procedures;

• Damage caused by force majeure or unforeseeable circumstances;

• Damages resulting from the execution of the orders of the hierarchical superior;

• Damages caused in situations of self-defense or state of necessity;

• Damages ascertained after three years from the date of their occurrence.

II. Legal protection of the police officer in the context of occupational safety and health. The legal protection of the police officer must be understood as an integral part of public security and the rule of law. Through a coherent legislative framework, applicable and adapted to the current challenges, it is possible to ensure not only the individual protection of the policeman, but also the efficiency of the act of justice and the increase of citizens' trust in the law enforcement agencies. The analyzed legislation constitutes the foundation of this protection and must be applied unitarily, interpreted flexibly and constantly updated, in relation to the dynamics of society and contemporary crime.

The protection of police officers in the field of occupational safety and health is ensured by primary, secondary and tertiary level legislation. In this paper we will present the main aspects resulting from the primary legislation, as follows [15]:

1. Law no. 319/2006 on occupational safety and health [4], also known as the Law on Safety and Health at Work, establishes the general framework for ensuring safe and healthy working conditions for all workers in Romania, including police officers. The main objective of this law is to establish measures to promote the improvement of occupational safety and health, the prevention of occupational risks and the protection of workers' health. However, given the specificity of police activities, the application of certain provisions must be adapted to the particular conditions of operative work. The law obliges the employer (MIA) to assess occupational risks, implement prevention measures and provide

protective equipment. For police officers, the application of this law means access to professional training, medical monitoring and continuous training, essential aspects in increasing professional safety.

The applicability of Law no. 319/2006 in the police field. Employer's obligations towards police officers. The Ministry of Internal Affairs, as an employer, has the responsibility to implement measures to ensure the occupational safety and health of police officers. These obligations include:

• Occupational risk assessment: Identifying and assessing risks specific to police activities, such as emergency interventions, the use of weapons or exposure to dangerous agents.

• Elaboration of a prevention and protection plan: Establishment of the technical and organizational measures necessary for the prevention of work accidents and occupational diseases, adapted to the specifics of the activities carried out by police officers.

• Provision of personal protective equipment: Provision of appropriate equipment, such as bulletproof vests, helmets and other means necessary for the protection of police officers during missions.

• Training and informing police officers: Organizing periodic training sessions on occupational health and safety norms, as well as continuous information about the risks associated with different types of interventions.

• Health monitoring: Ensuring periodic medical surveillance to detect any work-related conditions early.

Rights and responsibilities of police officers. Police officers have the right to a safe and healthy working environment, according to the provisions of Law no. 319/2006. This includes access to protective equipment, participation in training programs and the possibility to express their opinions on occupational safety and health measures.

At the same time, police officers also have responsibilities, including:

Compliance with occupational health and safety rules: Correct application of procedures and use of protective equipment provided.

Participation in trainings: Active involvement in training programs and updating knowledge on occupational safety and health.

Hazard reporting: Informing superiors of any situation that poses a risk to one's own safety and health or that of colleagues.

2. GD No. 1425/2006 for the approval of the methodological norms for the application of Law 319/2006 [5] approves the Methodological Norms for the application of the provisions of the Law on Occupational Safety and Health no. 319/2006, establishing the detailed framework for the implementation of occupational health and safety (OSH) measures in various fields of activity. For police officers, these rules provide an essential legal framework aimed at protecting against occupational risks and ensuring safe and healthy working conditions. This decision details the employer's obligations in the field of occupational safety and health (OSH) and provides an organizational structure for the implementation of the measures provided by the law. In the case of police officers, GD 1425/2006 is essential for establishing the way in which occupational risks are identified and controlled: setting up security committees, designating the personnel responsible for OSH, organizing periodic trainings and developing prevention plans. Considering the specifics of police work, this methodological framework is indispensable for adapting the measures to the reality on the ground.

Employer's obligations in the field of OSH. According to GD No. 1.425/2006, the Min-

istry of Internal Affairs (MIA), as the employer of police officers, is responsible for implementing specific measures for their protection:

1. Occupational risk assessment: Identification and assessment of risks associated with police activities, including those related to operative interventions, use of weapons or exposure to biological and chemical agents.

2. Elaboration and implementation of the prevention and protection plan: Establishment of the technical, organizational and other measures necessary for the prevention of work accidents and occupational diseases.

3. Provision of personal protective equipment: Provision of appropriate equipment, such as bulletproof vests, helmets and other specific means, depending on the identified risks.

4. Continuous training and training: Organisation of periodic training programmes in the field of OSH, adapted to the specifics of the activities carried out by police officers.

Rights and obligations of police officers in the field of OSH

1. Right to a safe working environment: Ensuring working conditions that minimise occupational risks and protect health and physical integrity.

2. Access to protective equipment: Use of appropriate personal protective equipment, provided by the employer, depending on the specifics of the missions.

3. Participation in periodic trainings: The obligation and right to participate in continuous training and training sessions in the field of OSH, in order to be up to date with the latest procedures and safety measures.

4. Reporting incidents and unsafe conditions: The obligation to inform superiors about any situation that poses a risk to occupational safety and health, thus contributing to the prevention of accidents and the improvement of working conditions.

Occupational Safety and Health Committee. GD No. 1.425/2006 provides for the establishment of an occupational health and safety committee within units with at least 50 workers. This committee has the role of facilitating the consultation and participation of police officers in decision-making on OSH, analysing and proposing measures to improve working conditions and prevent occupational risks.

Procedures in the event of a work-related accident or occupational disease. In the event of a work accident or the occurrence of an occupational disease, GD no. 1.425/2006 establishes the obligations of the employer and the policeman:

1. Investigation of the event: The employer has the responsibility to carry out a thorough investigation to determine the causes and circumstances of the accident or illness.

2. Reporting to the competent authorities: Transmitting the conclusions of the investigation to the territorial labour inspectorates and other relevant institutions, according to the legal provisions.

3. Implementing preventive measures: Adopting corrective measures to prevent such incidents from happening again in the future.

III. Brief comparative analysis of social systems on the legal protection of police officers against psychosocial risks in the US, Europe and Romania. In order to better understand the current level of legal protection and development opportunities in Romania, a comparative analysis with other advanced social systems, such as those in the United States of America and the European Union, is useful. Thus, we can identify effective practices and mechanisms that could be implemented or adapted to the Romanian context.

1. Legal protection of police officers in Romania vs. the USA. Both in Romania and

in the USA, police officers benefit from a legal system of protection in the exercise of their function. However, the US offers additional protection through the doctrine of qualified immunity and the strong involvement of trade unions. On the other hand, Romania has a well-defined and constantly developing legal framework, especially through recent initiatives such as GEO 82/2024. Both systems reflect different social and cultural realities, but converge in the common goal of protecting the dignity and safety of the police officer.

The legal protection of police officers in the US is a well-structured but also complex system that combines *institutional rights, jurisprudence and union support.* Its purpose is to enable police officers to carry out their duties in a safe environment, without undue fear of legal consequences — but also to impose standards of accountability. In the United States, *police officers benefit from a complex legal framework of protection*, which covers both aspects related to the exercise of their job duties and their rights as public employees. Legal protection is manifested at the *federal, state, and local levels*, and includes a combination of *laws, case law, domestic policies*, and collective agreements.

We briefly list some of the key dimensions in terms of protection that the US demonstrates:

Qualified Immunity [16] it is one of the most controversial and important protection mechanisms, *being a legal doctrine created by the U.S. Supreme Court* that protects police officers and other government officials from civil liability, as long as they do not violate "clearly established constitutional rights" of citizens. *As for applicability*: it applies in civil (not criminal) trials, especially in cases of excessive use of force or violation of other rights.

Trade union representation and collective agreements [17]. *Police unions* (e.g. Fraternal Order of Police, Police Benevolent Association) provide legal aid and negotiate collective agreements with local authorities. These contracts include *legal protection clauses*, such as:

- Right to legal advice during investigations.
- Deadlines for disciplinary investigation.
- Protection against unfair dismissals.
- Malpractice insurance or legal defense funds.

Protection from internal and criminal investigations [18]:

- Police officers have *the right to legal representation* during internal or external hearings.
- In many jurisdictions, there are regulations that give them a set of *procedural rights* (sometimes known as the "Police Officer Bill of Rights" – in some states).
- In some cases, the police officer may be placed on paid administrative leave during the investigation

Liability insurance and protection funds:

- Police departments or cities offer *liability insurance* for possible compensation.
- Also, some jurisdictions have *special funds* to cover the legal costs of officers involved in litigation.

Protection against physical hazards and threats [19]:

- Federal and state law provides *harsher penalties for insulting or assaulting a police officer*.
- Some states offer additional protection through *personal data privacy laws* – for example, officers' addresses are not public.
- In extreme cases, *identity change or relocation may be offered* (e.g. witness protection, if there are high risks).

Jurisprudence and constitutional protection:

• Police protection is based on court interpretations related to *the Fourth Amendment (searches and arrests), the Fifth (self-incrimination), and the Fourteenth (due process).*

• For example, in cases of use of lethal force, courts apply the "*objective rationality*" *test* established in the case *of Graham v. Connor (1989)* [20].

Health, psychology and post-trauma support programs [21]:

• Many police officers benefit from *psychological counseling programs*, post-traumatic treatments, and financial support if they suffer injuries while on duty.

• In some states, there are laws that classify *post-traumatic stress disorder (PTSD)* as an occupational disease eligible for compensation [22].

Legal protection of police officers in Romania vs. the European Union. Romania is in the process of consolidating the regulatory framework in the field of police protection, with significant progress in recent years, but with significant differences compared to Western European models, where police officers benefit from stronger institutional structures, influential unions and favorable jurisprudence in the field of labor law [6].

Romania faces problems related to the application of sanctions for outrage, the lack of effective post-event protection and low public perception. *France*, *Germany*, *Italy and Spain* have clear legislation, tough sanctions and active institutional measures to protect the police. *The Nordic countries* adopt a balanced model, based on prevention and public trust, which reduces the need for repressive measures [23].

In most Western European countries, police officers involved in serious incidents (physical attacks, violent confrontations, threats to life) benefit from legal, psychological and financial support from the state [7].

In Romania, there is no well-developed mechanism for the psychological support and reintegration of police officers affected by professional traumas. Although some structures offer counseling, they are insufficient and poorly funded. In Romania, many convictions for outrage end with suspended sentences, which reduce the preventive effect of the law.

In Germany, France and Italy, police officers involved in serious incidents can benefit from mandatory psychological counseling and extensive protection against threats [24].

The consequence of this deficiency in Romania is a higher rate of professional stress, premature resignations and decreased efficiency in the field.

In France and Germany, attacks on police officers are considered serious crimes and sentences are strictly enforced. In France, a serious attack on a policeman can be punished with up to 7 years in prison [25].

In Romania, police officers are often under-equipped and do not have the means to protect their own safety. In Germany and France, every police officer is equipped with standardized protective equipment, and the use of body cameras is mandatory in many missions [7].

In Romania, trust in the police is affected by corruption scandals and a negative public perception. This makes police officers more vulnerable to attacks and has more difficulty in imposing authority. In the Nordic countries, the police are perceived as a transparent institution, which significantly reduces the number of violent incidents [7].

III. Conclusions. The analysis carried out in this paper highlights the urgent need for the continuous consolidation and adaptation of the legal protection of the police officer in Romania, in the dynamic and complex context of the contemporary criminal phenom-

enon. The current regulatory framework, mainly represented by Law No. 360/2002, GEO No. 82/2024 and MIA Order No. 21/2025, demonstrates significant positive developments, such as the introduction of police officers' right to reimbursement of legal aid expenses in cases of outrage and civil or criminal proceedings related to professional activity.

By clarifying the conditions of material liability and by introducing clear provisions for exemption in specific situations, MIA Order No. 21/2025 is an essential step towards an efficient delimitation between the inevitable human error in the operational context and the acts committed by negligence or intention. These amendments directly contribute to reducing the risk of administrative abuse and strike a balance between liability and professional protection.

Compared to the systems in the United States of America and the European Union countries, Romania still shows some deficiencies, especially in terms of protection against psychosocial risks and psychological support after traumatic incidents. International models provide solid examples of the importance of trade union involvement, professional liability insurance and constant and mandatory psychological support after major incidents.

It is imperative that Romania continues to continuously update and adapt its legislation and institutional practices, including additional measures for the psychological protection and professional reintegration of police officers affected by traumatic incidents. Increasing efficiency on the ground, reducing professional stress and strengthening public trust in public order and safety institutions depend directly on these measures.

In conclusion, the legal and institutional protection of the police officer must be seen as an essential component of a coherent national strategy to prevent and combat crime, as well as to maintain a healthy and safe social climate. The development of a modern, flexible legislative and organizational framework adapted to contemporary challenges is an imperative to ensure the dignity, safety and professional efficiency of the Romanian policeman.

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THE ROLE OF PUBLIC SERVICES IN CRIME PREVENTION AND COMBATING

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Summary

The article analyzes the complex and bidirectional relationship between public services and crime, using the case of Suceava, Romania, as an example. The study highlights how high-quality public services play a crucial role in preventing and combating crime, while deficiencies in these services can contribute to an increase in criminal activity. An efficient and proactive public administration can implement strategic measures to improve community safety through investments in infrastructure, education, healthcare, and social services. Analyzing the evolution of the crime rate in Suceava between 2017 and 2024, a significant increase in robbery and theft from commercial establishments has been observed. This trend underscores the need for urgent and effective measures to prevent the escalation of this phenomenon, with public services playing a key role in this process. The article emphasizes the importance of an integrated approach, in which public institutions collaborate to reduce social vulnerabilities and create a safe environment for citizens. In this context, initiatives and public policies that have had a positive impact on reducing crime in Suceava are analyzed, providing a model of best practices for other communities.

Keywords: crime, public services, specific crime rate coefficient, education, prevention, public safety, social assistance

Introduction. The main objective of this article is to analyze the link between public services and crime, with a focus on the situation in Suceava Municipality, Romania. There is a reciprocal relationship between public services and the prevention and combating of crime. Weak public services will contribute to an increase in crime, but public administration can improve these services to reduce criminality. We aim to highlight the crucial role of public administration in improving services to prevent and combat crime.

Firstly, the increase in the crime rate has a significant impact on the functioning of public services, affecting their efficiency and proper operation. For example, an environment dominated by urban violence, assaults, thefts, and acts of vandalism will lead to additional costs for safety, absenteeism and school dropout, an overburdened healthcare system, and stress and trauma among citizens.

On the other hand, public services can contribute to crime prevention, which represents a major objective of local public administration.

The Strain Theory suggests that individuals experience a state of tension when they fail financially and may resort to criminal behavior when they lack access to legitimate means, often facilitated by public services such as education and employment opportunities, to achieve the goals valued by society [13].

Methodology. The present study uses a mixed approach – both qualitative and quantitative – to analyze the relationship between public services and crime in Suceava Municipality. The investigation was based on empirical data obtained from official sources, such as the reports of the Suceava County Police Inspectorate [5] and documents from

the Suceava County Council, covering the period 2017-2024 [2].

The quantitative analysis focused on the Specific Crime Coefficient (SCC), an indicator calculated based on the number of robberies and thefts from commercial establishments, relative to the municipality's population. This coefficient was essential for identifying the evolution of the criminal phenomenon and highlighting correlations between its fluctuations and potential deficiencies in local public services.

In addition to statistical data, the research was also supported by theoretical documentation based on specialized literature at both national and international levels. Works addressing the relationship between education, social inclusion, economic factors, and criminal behavior were consulted.

The qualitative component of the research consisted of a critical analysis of the local context and the way in which services such as education, healthcare, social assistance, infrastructure, and public order, etc., influence, directly or indirectly, the level of crime. Thus, the research provided a perspective on how local public administration interventions can contribute to preventing and reducing crime by strengthening essential services for social cohesion.

Specific crime coefficients in suceava municipality. As a legal phenomenon, crime "comprises all human behaviors considered offenses, incriminated and sanctioned as such, under certain conditions, within a criminal law system, concretely determined by geography and history" [9, p. 13].

According to a report by the Suceava County Council, the crime situation recorded by the Suceava County Police Inspectorate (IPJ Suceava) shows that, from a statistical perspective, in the year 2023 there was an increase in the number of reported crimes, 212 more than in 2022, reaching a total of 14,723 criminal offenses [2].

We aim to analyze the Specific Crime Coefficients at the municipal level in Suceava, which are statistical indicators reflecting the incidence of crime in a particular locality and are important for analyzing criminal trends [6].

The Specific Crime Coefficient (SCC) is a statistical indicator calculated for reported robberies and thefts from commercial establishments recorded in the previous year.

The formula for calculation is:

SCC = (Number of robberies and thefts from commercial establishments / Population of Suceava Municipality) × 100,000.

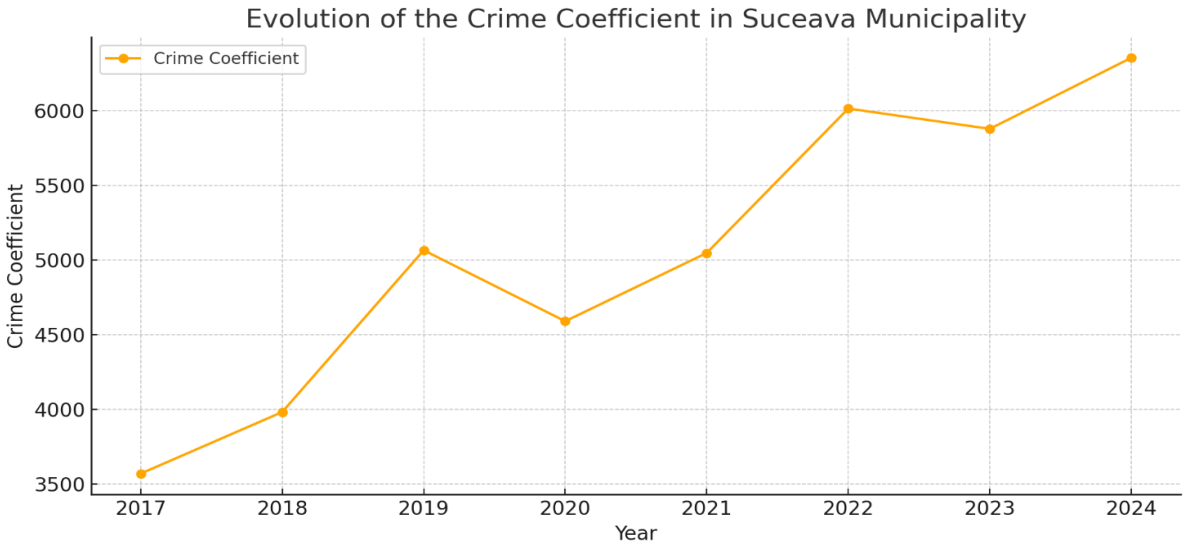
Table no. 1: Crime coefficient of Suceava Municipality for the period 2017-2024

Year	Crime Coefficient of Suceava Municipality (%)	Crime Rate Category	Annual Variation (%)	Trend
2024	6,353.67	high	+8.10%	Significant increase compared to 2023
2023	5,877.62	high	-2.26%	Slight decrease compared to 2022
2022	6,013.50	high	+19.17%	Sharp increase compared to 2021
2021	5,046.40	high	+9.97%	Moderate increase compared to 2020

2020	4,588.86	high	-9.39%	Significant decrease compared to 2019
2019	5,064.31	high	+27.3%	Sudden increase compared to 2018
2018	3,980.58	high	+11.6%	Increase compared to 2017
2017	3.568,11	high	-	Reference point

Source: Own analysis based on data from IPJ Suceava

Fig. No. 1. Evolution of the crime coefficient in Suceava Municipality during the period 2017-2024



Between 2023 and 2024, an 8.10% increase in crime was recorded, signaling a worsening of the situation in 2024. This trend can be explained by factors such as a rise in the number of offenders, decreased effectiveness of security measures, or economic difficulties that favored the commission of thefts and robberies.

Between 2022 and 2023, a slight decrease of 2.26% was observed, suggesting a modest improvement compared to the previous year, yet insufficient to reverse the general upward trend.

During the 2021-2022 period, crime rose significantly by 19.17%, which may reflect a rapid escalation of offenses following the reopening of the economy after the COVID-19 pandemic.

Likewise, between 2020 and 2021, there was a 9.97% increase, suggesting that the crime-reducing effects of pandemic restrictions did not persist in the long term.

In contrast, comparing 2019 to 2020 showed a 9.39% decrease, possibly due to mobility restrictions and safety measures imposed during the health crisis.

Between 2018 and 2019, a sharp 27.3% increase was recorded, indicating a surge in criminal activity during that period.

Overall, a long-term upward trend can be observed, with crime steadily increasing in recent years except for a slight dip in 2020, likely influenced by the pandemic context.

The year 2024 marks a new peak in criminal activity, with a coefficient exceeding 6,353.67, indicating deterioration in public safety compared to previous years.

The fact that all values fall within the "high" category shows that the crime issue in Suceava is a structural one and requires more effective measures.

The analysis of the evolution of the crime coefficient in Suceava from 2017 to 2024 reveals a significant increase in robberies and thefts from commercial establishments. This trend indicates the urgent need for effective measures to prevent the escalation of the phenomenon.

Public services as tools for crime prevention. In any locality, crime is a serious threat to social development and to citizens' right to live in safety. The authorities in Suceava Municipality must make informed decisions to reduce the crime rate and improve the quality of life of the citizens.

The data analyzed in the table above suggest that without effective intervention by the authorities, crime will continue to rise in the coming years. A Romanian research study conducted by the Ministry of Internal Affairs (MAI) on the relationship between organized crime, corruption, and public services indicates governmental interest in understanding and addressing this interconnection [8].

There are a number of public services that can have an impact on crime rates, such as: educational services, public safety and infrastructure-related services, surveillance cameras, social assistance, healthcare, etc. Local interventions by the authorities in Suceava Municipality should lead to urgent measures for the development of these public services, as they have a differentiated, yet relevant, impact on crime prevention.

The first services we wish to highlight are those related to education. Special emphasis must be placed on educational services, as low levels of education and high school dropout rates contribute to youth involvement in illegal activities.

Low education levels are correlated with higher crime rates, as education has a strong crime-reducing effect, making investment in education a crucial crime prevention strategy [1].

The role of educational services in crime prevention in Suceava Municipality is essential, contributing to the development of civic awareness and respect for the law. Schools support the inclusion of children from vulnerable backgrounds, thereby reducing the risk of delinquency.

There is a growing body of research demonstrating a correlation between education and crime, showing that individuals with lower education levels are more likely to commit crimes.

For example, Lochner (2004) demonstrates that a one-year increase in a state's average education level can lead to an 11% or greater reduction in arrest rates, highlighting the positive impact of education on crime prevention [7].

Vargas J. argues that limited access to quality education reduces opportunities for personal and professional development, increasing the risk of engaging in illegal activities [14].

The article by Joel Carr, Olivier Marie, and Sunčica Vujić shows that education has a positive effect in reducing criminal behavior, particularly by increasing future earning potential. The research also highlights that individuals legally required to remain in school longer are less likely to commit crimes [1].

Swisher and Dennison analyze the relationship between intergenerational changes in education levels and crime. This study is among the first to examine how generational changes in education relate to crime in the United States. A drop in education level com-

pared to the previous generation was associated with an increase in criminal behavior, while educational improvement was correlated with a reduction in crime [12].

In the article by Ford Jason A. and Schroeder Ryan D. it is shown that both the level of education attained and attachment to school are well-established predictors of delinquent behavior. The results show that attending college and commitment to higher education are associated with reduced criminal behavior in adulthood [3].

Hjalmarsson et al., in the cited article, analyze the causal effect of education level on convictions and incarceration. Fewer years of education are often negatively associated with an increased risk of criminal behavior [4].

There is also a need for services that reduce unemployment and, implicitly, increase the number of available jobs, which will lead to fewer people resorting to crime.

The influence of social assistance and poverty-reduction programs on crime rates is complex. On one hand, poverty and lack of access to essential resources are often correlated with criminal behaviors, suggesting that social interventions may play an important role in mitigating them.

One study found that spending on social and public health services was associated with lower homicide rates [11].

Jason Vargas explores the impact of socioeconomic factors on crime levels, highlighting the significant link between poverty, unemployment, inequality, and criminal behavior. Communities well-equipped with resources and support services are better prepared to prevent and manage crime [14].

In Suceava Municipality, the Local Police service plays a key role in reducing crime through prevention actions, monitoring public spaces, and collaborating with other institutions to maintain community order and safety. The Local Police in Suceava can help reduce crime through regular patrols in high-risk areas, video surveillance of neighborhoods, rapid response to public disturbances, and prevention of juvenile delinquency and drug use.

Additionally, public services related to infrastructure and public safety can prevent environments that facilitate crime, such as robberies and thefts.

The lack of adequate housing for low-income individuals is indirectly correlated with homicide rates [10].

Investments in community infrastructure, such as parks, recreational facilities, and community centers can strengthen social cohesion and offer positive alternatives, potentially reducing crime rates.

Other public services that could impact crime reduction include expanded public lighting and video surveillance, especially in high-risk neighborhoods.

Conclusions. The analysis highlights the close link between the quality of public services and the level of criminality. The efficient allocation of resources and the development of essential services such as education, healthcare, social protection, housing access, etc., can address the root causes of criminal behavior and support the creation of safer and more stable communities.

It is recommended that public authorities and governmental institutions adopt an integrated approach that coordinates the various areas of public services within a unified strategy, aimed at effectively addressing the complex causes of crime.

In conclusion, combating crime in Suceava cannot be effective without sustained intervention in the quality and accessibility of public services. Strengthening education, reducing social inequalities, expanding safe urban infrastructure, and developing community support programs can significantly contribute to reducing criminal behavior and

building a safer community.

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PROBLEMS OF LEGAL CONSOLIDATION AND PROBLEMS OF QUALIFICATION OF TERRORISM AND SABOTAGE

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Summary

Integration processes are gaining momentum and Ukraine is facing both positive and negative experiences of Western countries. The above necessitates the adoption of preventive measures to prevent the spread of one of these negative phenomena – terrorism and its instrument, sabotage acts.

Despite the rather insignificant share in the total number of criminal acts, the social danger of sabotage is due to the fact that even a single act of sabotage can cause serious damage to our country's economy, slow down the pace of construction and commissioning of certain enterprises, and disrupt the rhythmic operation of a particular sector of the national economy. In addition, it should be borne in mind that such criminal acts also cause serious moral and political damage. Therefore, in today's environment, given the creation of new means of mass destruction of enormous destructive power, chemical and bacteriological weapons of considerable effectiveness, the danger of sabotage is even greater. This circumstance necessitates a more detailed study of the features of such related crimes as terrorist acts and sabotage, including the features that determine the constructive differences between the crimes in question for a more correct qualification of such acts.

Terrorism and sabotage have become a central object of scientific research during martial law. Scholars and practitioners have repeatedly pointed to the overcrowding of the Criminal Code with norms that have a significant commonality of objective and subjective features, which causes difficulties in their qualification in law enforcement. These include the corpus delicti provided for in Articles 113 and 258 of the CC. However, these norms are not correlated as general and special, they are both special in relation to a number of crimes against life and health of a person, crimes against property, crimes against the environment, etc. Determination of the general rule, the features of which are clarified, specified and supplemented by Articles 113 and 258 of the CC depends on which of the alternative forms of acts provided for in these Articles is currently being committed and what harm the act is aimed at causing.

Keywords: criminal law of Ukraine, sabotage, terrorism, crime, public security, terrorist act, saboteur, constitutional order, terrorist.

Introduction. Integration processes are gaining momentum and Ukraine is facing both positive and negative experiences of Western countries. The above necessitates the adoption of preventive measures to prevent the spread of one of these negative phenomena – terrorism and its instrument, sabotage acts.

Despite the rather insignificant share in the total number of criminal acts, the social danger of sabotage is due to the fact that even a single act of sabotage can cause serious damage to our country's economy, slow down the pace of construction and commissioning of certain enterprises, and disrupt the rhythmic operation of a particular sector of the national economy. In addition, it should be borne in mind that such criminal acts also cause serious moral and political damage. Therefore, in today's environment, given the creation of new means of mass destruction of enormous destructive power, chemical and bacteriological weapons of considerable effectiveness, the danger of sabotage is even

greater. This circumstance necessitates a more detailed study of the features of such related crimes as terrorist acts and sabotage, including the features that determine the constructive differences between the crimes in question for a more correct qualification of such acts.

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Purpose and objectives of the study. The purpose of this study is to carry out a comparative analysis of the crimes provided for in Articles 113 (Sabotage) and 258 (Terrorist Act) of the Criminal Code of Ukraine. This leads to the following tasks: to identify the features of sabotage and terrorist act as related crimes, including the features which allow to distinguish between these criminal acts.

In connection with the military aggression of the Russian Federation against Ukraine, based on the proposal of the National Security and Defense Council of Ukraine, in accordance with paragraph 20, part 1, Article 106 of the Constitution of Ukraine, the Law of Ukraine "On the Legal Regime of Martial Law" and the Decree of Ukraine.

Within the meaning of the provisions of Article 2 of the Geneva Convention relative to the Treatment of Prisoners of War of 12.08.1949, ratified by the Decree of the Presidium of the Verkhovna Rada of the Ukrainian Soviet Socialist Republic of 03.07.1954, an armed conflict of an international nature has been going on between the Russian Federation and Ukraine since 20.02.2014 as a result of the armed aggression of the Russian Federation against Ukraine.

The current criminal legislation of Ukraine defines a terrorist act as one of the crimes against public security, which involves the use of weapons, explosion, arson or other actions that endanger human life or health, or cause significant property damage or other serious consequences, if such actions were committed with the aim of violating public security, intimidating the population, provoking a military conflict, international complications, or with the aim of influencing decision-making or the commission or omission of actions by public authorities. In turn, sabotage as a crime under Article 113 of the Criminal Code of Ukraine was significant back in the days of the Soviet Union, when the world was conditionally divided into two poles, between which a brutal Cold War was waged [2]. American intelligence agencies conducted direct subversion in many areas of public life, including the economy. The textbook "Soviet Criminal Law" states: "The enemies of the Soviet state have sought in the past and may attempt in the future, at present, to weaken our economic basis by using such a dangerous form of struggle as sabotage" [8]. Our national criminal law defines sabotage as the commission of explosions, arson or other acts aimed at weakening the state, aimed at mass destruction of people, causing bodily injury or other harm to their health, destruction or damage to objects of important

national economic or defense importance, as well as the commission of acts aimed at radioactive contamination, mass poisoning, spread of epidemics, epizootics or epiphytotics for the same purpose [1]. Thus, it can be noted that a terrorist act is similar to sabotage in many respects. However, there are certain features that distinguish these crimes from each other. Thus, attention should be paid to the objective side of the crime under Article 113 of the Criminal Code of Ukraine. Let us highlight the following forms of it, namely the commission of explosions, arson or other actions aimed at mass destruction of people, causing bodily injury or other harm to their health; explosions, arson or other actions aimed at destruction or damage to objects of important national economic or defense importance; actions aimed at radioactive contamination; actions aimed at mass poisoning; actions aimed at spreading epidemics; actions aimed at spreading epizootics; actions aimed at spreading epiphytotics. That is, the essence of sabotage is determined by a set of signs, characteristics and essential features inherent in it as a military-political and legal category, which constitute the internal content of this criminal act. Sabotage is primarily aimed at weakening the state, causing great damage to its economic system [6].

Disposition of Art. 113 of the Criminal Code "Sabotage"	Provision of Article 258 of the Criminal Code "Terrorist Act"
1) committing explosions;	1) use of weapons;
2) arson;	2) commission of an explosion,
3) actions aimed at the mass destruction of people;	3) arson;
4) actions aimed at causing bodily harm or other harm to people's health;	4) commission of actions that created a danger to the life or health of a person;
5) actions aimed at the destruction or damage of objects of important national economic or defense importance;	5) commission of actions that created a danger of causing significant property damage or the occurrence of other serious consequences;
6) committing acts aimed at radioactive contamination;	6) threat to commit the specified actions.
7) mass poisoning;	
8) spreading epidemics;	
9) epizootics;	
10) epiphytotics.	

Both of these elements of the crime are formal in terms of the specifics of the objective side of the construction. In addition, recognizing as a criminal the threat of committing at least one of the listed actions in part 1 of Article 258 of the Criminal Code means the presence of a truncated element of the crime.

In both corpus delicti, the crimes are aimed at causing physical harm to an unlimited number of persons, as well as damage or destruction of property [1, p. 230].

The number of criminal offenses committed under these articles is shown in the table at the end of article. It should be noted that 0.5% (33 out of 6270) of the total number of

crimes against national security is “Sabotage” under Article 113 of the CCU in 2023, while in 2024 it was already almost 4.2% (251 out of 5998). Whereas “Terrorist act” accounted for 0.17% (14 out of 7974) of the total number of criminal offenses against public security in 2023 and 0.6% (27 out of 8789) in 2024. While the percentage of cases referred with an indictment is even lower: in 2023, 18% (6 out of 33) of the registered criminal offenses were referred to court for “Divorce”, and 15% (38 out of 251) of the registered criminal offenses were referred to court in 2024. As for the “Terrorist Act”, 0% (0 out of 14) were brought to court in 2023, and 0.6% (51 out of 8789) in 2024 [10].

Thus, in 2024, 4 convictions were handed down under Art.113 “Sabotage”, while in 2023, none were handed down. In 2022, there were 2 verdicts (one under Article 258 and the other under Article 258-1), in 2023, 1 verdict, and in 2024, there were 1 verdict under Article 258 of the Criminal Code “Terrorist Act”.

The globalization of terrorism and the increased danger are caused by the random choice of the object of direct influence of terrorists. Terrorism has become a socio-legal and even socio-political phenomenon largely due to the low probability of its vulnerability and the high efficiency of its impact on the target. Terrorism owes this to the use of violence in its sudden, insidious forms against unprotected people and material objects that are not involved in the conflict. In addition, a terrorist act is characterized by such a method of committing a crime as a threat to commit certain actions. Committing sabotage by threatening is not provided for by the current criminal law.

According to scholars, the difference between sabotage and a terrorist act lies in the moment when these crimes are recognized as complete. Thus, sabotage is completed from the moment of committing the planned criminal acts (explosion, arson, spread of epidemics, epizootics and other actions, in accordance with the disposition of Article 113 of the Criminal Code). For a terrorist act, the commission of an explosion or arson, for example, is usually only the beginning of the objective part. But this argument is rather dubious, it cannot be that a threat of arson is a terrorist act, as well as arson, while arson is sabotage.

It is more reasonable to believe that after creating circumstances of public concern by arranging an explosion or arson, the perpetrators of a terrorist act link their subsequent actions to the act, for example, by demanding that local authorities make a certain decision. We agree here, but then all the cases considered by the Ukrainian courts have problems in qualification, because in none of them was there a demand made on local governments.

Thus, on July 13, 2022, Odessa Case No. 522/6287/22 Proceedings No. 1-kp/522/1638/22 PERSON_3, intentionally, by prior conspiracy with unidentified persons for mercenary motives, in the period from September 2021 to 12/15/2021, committed organizational and coordination actions regarding the activities of a citizen of Ukraine PERSON_9, INFORMATION_2, thereby committing on 12/15/2021 at approximately 04 hours. 00 min. a terrorist act by setting fire to a military vehicle KAMAZ (state license plate NUMBER_1), which was located on the territory of military unit NUMBER_2 at: ADDRESS_2, which is part of the Air Command “INFORMATION_3” of the Armed Forces of Ukraine, which created a danger to human life and health in order to violate public safety and intimidate the population [11].

The act was qualified as a terrorist act, while it was committed secretly, no demands were made on local self-government bodies (military administration), it was committed

by arson and was most likely directed at an "object of defense significance", but was qualified as a terrorist act.

There are also correct qualifications of "Sabotage", for example, the pre-trial investigation established that on 05/03/2024 at 15 hrs. 14 min, a minor (the pre-trial investigation in respect of whom is being carried out in another criminal proceeding), being on the territory of the city of Voznesensk, Mykolaiv region, a more precise place has not been established by the pre-trial investigation, using his Apple mobile communication terminal, later, in the course of correspondence, a user of the Telegram messenger with the nickname "PERSON_11" sent a text message to a person (whose pre-trial investigation is being carried out in another criminal proceeding), in which he indicated the types of tasks and the amount of payment for their implementation, namely "the collapse of the regime is coming soon" inscriptions on buildings - USD 200, INFORMATION_3 buildings – USD 600; arson of a forest – USD 500; arson of a railway relay cabinet – USD 1000.

Setting fire to relay cabinets, signal installations and other means of controlling the rolling stock of a railroad, which is of important economic and defense importance, is a weakening of the state, i.e. sabotage [12].

And also, on 08/26/2024, Vasylkiv City District Court of Kyiv Region, case No. 357/8479/22, proceedings No. 1-kp/362/246/24, brought to justice under part 2 of Article 15, part 2 of Article 113, part 1 of Article 263 of the Criminal Code of Ukraine.

At a precisely unspecified place and time, but no later than July 2018, while in the territory of the Russian Federation, PERSON_8, acting intentionally, with the aim of weakening the state of Ukraine, provided unidentified representatives of the Russian special services with his consent for further use as a perpetrator of sabotage on the territory of Ukraine. To this end, PERSON_8, being a native of Skvyra (Kyiv region, Ukraine) and having a bachelor's degree in oil and gas engineering, agreed to move to Ukraine for permanent residence, obtain Ukrainian citizenship and get a job at an enterprise of important national economic importance in order to further destroy or damage its infrastructure.

In addition, on September 24, 2019, PERSON_8 began to actively collect information about the dates, times and volumes of planned fuel supplies to the oil depot, finding out this information from the employees of the oil depot, for further transferring it to unidentified pre-trial investigation representatives of the Russian special services and activating the GPS tracker installed by him, which would transmit the exact GPS coordinates of the oil depot, to launch missile strikes and artillery shelling of the Russian Armed Forces on its infrastructure [13].

In terms of the subjective aspect, a terrorist act and sabotage differ in terms of the purpose. The commission of a terrorist act may be due to the perpetrator's desire to violate public security, intimidate the population, provoke a military conflict, international complications, or influence decision-making or the commission or omission of actions by state or local authorities, officials of these bodies, associations of citizens, legal entities, or draw public attention to certain political, religious or other views. In most cases, a perpetrator of a terrorist act aims to create conditions under which his or her own will (the will of a terrorist group or organization) is most effectively imposed on public authorities, legal entities or individuals. In contrast, the purpose of committing sabotage is to weaken the state with the possible subsequent destruction of it as a political organization of society. As for the public concern that arises after sabotage, it is not covered by the crime [3].

Terrorism, providing psychological destabilization of society, is the most powerful

tool of information and psychological warfare. As a rule, it is not so much the direct damage caused by terrorist acts as the reaction to the threat to the wider society and government authorities that is the main goal of terrorists. The threat is always more frightening than the execution, because it is virtually impossible to technically implement mass terrorist attacks, and the threat exists for everyone, it becomes massive. A prerequisite for terrorism is the resonance of a terrorist action. Terrorism is fundamentally declarative. Wide publicity of information about a terrorist attack, turning it into the most discussed event, is a key element of terrorist tactics. A terrorist attack that goes unnoticed or is classified loses all meaning. This is what distinguishes a terrorist act from sabotage or even political assassination. Sabotage is a subversive act of force carried out by the state's special services, which involves direct losses incurred by the enemy. The publicity of the operation is of no interest to the saboteur and is even dangerous. Ideally, the sabotage imitates a man-made disaster, an accident, or a forceful action carried out by another force. Such sabotage as political assassinations carried out by intelligence services is preferred by the real perpetrators to be blamed on pretend perpetrators. On the contrary, a public response to a terrorist act is necessary for terrorists to change public sentiment and influence mass psychology. Terrorist organizations demonstrate their strength and willingness to go to the end, sacrificing both their own lives and the lives of victims. The terrorist loudly declares that there is a force in this society that will not accept the existing order of things under any circumstances and will fight it to victory [9].

And although some researchers emphasize that it is the purpose as a sign of the subjective side of the crime that distinguishes sabotage and a terrorist act, in practice it is quite difficult to make this distinction, because the purpose of "weakening the state" specified in Art. 113 of the Criminal Code is quite general. And does it not echo such goals of terrorists as, for example, provocation of a military conflict or international complication? In addition, quite often, by achieving the immediate goal – violation of public security, intimidation of the population, provocation of a military conflict, international complication, drawing public attention to certain political, religious or other views of the perpetrator, a person tries to achieve a distant goal – weakening the state.

To qualify the actions of a person under Art.258 of the Criminal Code, the mandatory participation of the person in a terrorist organization is not required, but it is enough to establish that the person acted with at least one goal specified in the disposition of the specified norm [14].

In November 2024 Svalyava Svalyava District Court of the Transcarpathian region as part of the panel of judges in Case No. 306/762/24 Proceedings No. 1-kp/306/222/24 accused PERSON_7, being a deputy of the Keretsk village council of the Khust district of the Transcarpathian region of the VIII convocation on 15.12.2023 at 10.00 a.m. together with other deputies and invited persons in a total of 29 people arrived at the meeting of the 24th session of the Keretsk village council of the VIII convocation, which was held in the premises of the village council at the address: ADDRESS_2. Accused PERSON_7 at 11 a.m. 23 min. in order to implement his criminal plan aimed at committing a terrorist act, in order to influence the decision-making of the local government body, to bring the explosive devices (grenades) available to him into combat readiness and to ensure explosions, left the session hall of the Keretsk village council and went into the corridor, where he performed all the necessary actions to bring the above-mentioned explosive devices into combat readiness, namely, he pulled out three safety rings, after which he squeezed

the explosive devices (grenades) in his hands in such a way as to prevent their premature activation, after which he placed the explosive devices in the pockets of his jacket [15].

Therefore, these concepts are different, although their commonality is that they characterize the focus on causing physical harm to an unlimitedly wide range of persons, and on the other hand, damage or destruction of material objects. Despite a certain commonality of the goals of sabotage and terrorism, it is possible to identify some fundamental differences between the phenomena we are considering. *Firstly*, if in Article 113 of the Criminal Code of Ukraine (sabotage), we are given an exhaustive list of criminal acts, then terrorism, in addition to those directly mentioned in Article 258, includes a wide variety of other actions. That is, terrorism is the commission, preparation, or threat of commission of an explosion, arson or other actions that create a danger to human life or health, or the threat of serious consequences, if they are committed with the aim of forcing state authorities, local self-government bodies or authorized persons, international organizations or their representatives, as well as individuals, legal entities to perform a certain action or refrain from performing it, aimed at intimidating the population, provoking war or military conflicts that will lead to international complications [7]. *Secondly*, if in sabotage the actions of criminals are aimed at causing significant damage to the economic system of the state, then in terrorism – at intimidating the population, destabilizing the situation. The main purpose of sabotage is mainly to weaken the state, and terrorism is to intimidate the population, force them to make decisions or refrain from making them. Thus, in sabotage, actions are aimed at destroying people, causing bodily harm or causing other harm, in terrorism, actions are aimed at intimidating the population or part of it, destabilizing, oppressing. The purpose of sabotage acts is to weaken the state, while the purpose of terrorism is to force them to make a decision or refrain from making it. In this case, the purpose is the main feature by which it is possible to draw a distinction between the specified crimes.

In addition to the above-mentioned feature, a number of other, relatively speaking, additional features can be distinguished between sabotage and terrorism. Thus, a saboteur usually acts secretly, and a terrorist – demonstratively, attracting the attention of the media and the population, that is, terrorists often advertise their criminal activities. In some cases, their desire to assign responsibility for the consequences of accidents to which they had no relation is even observed [5].

Conclusions. Thus, sabotage and a terrorist act, which by their legal nature are related criminal acts, have a number of similar and distinguishing features. In particular, the similarity of these crimes lies in the fact that they are characterized by a focus on causing physical harm to an unlimitedly wide range of persons, and on the other hand, on damaging or destroying material objects. The saboteur focuses not so much on causing harm to people as on destroying or damaging property objects. The actions of a terrorist, in turn, are characterized by a focus on causing harm to an unspecified wide range of persons and are committed in a generally dangerous manner, associated primarily with causing harm to a person. Supplementary, sabotage is usually committed secretly, and a terrorist act is demonstratively, attracting the attention of the media and the population. If we are guided by the above rules, then the majority of socially dangerous acts qualified in Ukraine should be attributed to sabotage, while some of them are mistakenly classified as a terrorist act.

In addition to the above, we propose to create one article that will have various

qualifying features and place it in the section against the foundations of national security, in which case the problems of qualification and mistakes in its implementation will disappear.

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	line		Criminal offenses recorded in the reporting period	Criminal offenses for which individuals have been served with a notice of suspicion	Criminal offenses in proceedings in which the pre-trial investigation has been suspended in accordance with Articles 280, 615 of the Criminal Procedure Code of Ukraine	Criminal offenses for which proceedings have been referred to court (parts 2, 3 of Article 283 of the Criminal Procedure Code of Ukraine)	Criminal offenses committed by certain categories of persons, proceedings for which have been completed						Criminal offenses in which proceedings are closed	Criminal offenses for which a decision has not been made at the end of the reporting period
							with an indictment	of them											
								persons who have previously committed criminal offenses	a group of people	persons in alcoholic intoxication	by or with the participation of minors								
А	Б		1	2	3	7	8	13	14	15	16			17	20				
Criminal offenses against the foundations of national security of Ukraine	2023		6 270	2 274	0	6	6	45	68	3	1			153	4 194				
Sabotage, ст. 113	2023		33	3	1	1	1	0	0	0	0			0	0				
Criminal offenses against the foundations of national security of Ukraine	2024		5 998	2 477	339	1 732	1 717	77	101	1	30			112	3 919				
Sabotage, ст. 113	2024		251	98	1	38	38	5	17	0	9			6	212				
Criminal offenses against public safety	2023		7 974	5 217	87	4 482	4 407	815	126	126	29			5 980	3 355				
Terrorist act, Article 258	2023		14	6	0	0	0	0	0	0	0			0	0				
Criminal offenses against public safety	2024		8 789	5 479	105	4786	4786	773	136	133	49			5 383	3 836				
Terrorist act, Article 258	2024		51	27	1	9	9	1	4	0	3			4	41				

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THE GLOBAL FIGHT AGAINST CRIME ON THE DARK WEB. LEGAL RESPONSES AND TECHNOLOGICAL INNOVATIONS

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Summary

The Dark Web represents an encrypted layer of the internet designed to ensure anonymity, facilitating illicit activities ranging from drug trafficking and illegal arms sales to human exploitation. Its decentralized nature and use of advanced encryption mechanisms pose significant challenges to monitoring and law enforcement, raising legal and ethical concerns related to privacy, jurisdiction, and digital surveillance.

This research examines emerging technologies used in digital forensics, including artificial intelligence, blockchain, and predictive models, assessing their effectiveness and legal implications in detecting criminal activities on the Dark Web. By investigating the difficulties in harmonizing the international legal framework -given legislative discrepancies and issues related to criminal liability in cyberspace -the study addresses the risks associated with the expansion of governmental surveillance powers, the impact of privacy-enhancing technologies, and the feasibility of behavioral analysis in identifying criminal intent.

Through a comparative analysis of global crime-fighting strategies and a study of operations dismantling criminal networks on the Dark Web, this paper aims to contribute to the debate on balancing security, fundamental freedoms, and digital space regulation.

Keywords: Dark Web, criminal activities, crime prevention, criminal networks, regulations, digital space.

Introduction. The Dark Web is one of the enduring paradoxes of modern governance: a "tool of privacy and free speech" and a "haven for criminal activity." While encryption and anonymization software provide users with insurance against surveillance and censorship, they also provide a niche for black markets, cybercrime, and human trafficking, which thrive in areas inaccessible to law enforcement.

The most pressing issue is how to prevent crime from occurring and taking place on the Dark Web without violating fundamental rights such as privacy and free speech. Governments must rise to the challenge of developing useful detection and enforcement tools in the face of legal, technological, and ethical obstacles. How can law enforcement agencies police a space that is designed to be untraceable? How can they prosecute criminal users of encryption for their benefit without violating the rights of general users?

This research supports the need for a multidisciplinary approach to combat crime on the Dark Web. The study will explore the role of emerging technologies – artificial intelligence, blockchain, Web 3.0 and digital forensics – in supporting law enforcement.

Predictive and behavioral analytics based on artificial intelligence have been proposed as potential means of identifying criminal intent, but their effectiveness and ethical implications have yet to be established. In addition, jurisdictional fragmentation hinders law enforcement, as cybercriminals use VPNs and anonymization tools to hide their physical location. The inability to attribute criminal responsibility across borders weakens transnational cooperation and creates loopholes that criminals can exploit.

The contributions of this research aim to address three issues. First, it will introduce a better understanding of the balance between security and online rights in law enforcement on the Dark Web. Second, it will measure the real-world practical effectiveness of AI-based forensics and data decryption methods using case studies. Finally, it will analyze major law enforcement operations, including Operation Disruptor and the Silk Road shutdown, to determine what worked and where improvements are needed.

Addressing these issues is necessary because criminal networks on the Dark Web pose a growing threat to global security. At the same time, excessive state regulation can lead to unhealthy practices of mass data collection and the abuse of civil liberties. By raising technical, legal, and ethical issues, this research can contribute to the debate on the extent to which the world can regulate digital anonymity without compromising security and human rights in the future of cyberspace.

Methods and materials applied. This study is based on an extensive review of scholarly literature, including peer-reviewed articles from major conferences and journals such as IEEE, Springer, Elsevier, and ACM. The selection aimed to include the latest research that provides both legal analysis and an investigation of technologies used to prevent cybercrime.

To identify relevant academic articles, keyword sets such as “Dark Web crimes”, “Dark Web regulation”, “legal implications of forensic technologies” and “law enforcement” were used in academic databases like Google Scholar, Web of Science, and Scopus. These keywords were chosen to ensure that the search covered a broad bibliography relevant to this interdisciplinary issue.

Only peer-reviewed journals were considered; those failing to explicitly address moral, technological or legal aspects of deterring criminal activities on the Dark Web were excluded. Citation frequency, publication relevance, and methodological quality were additional selection criteria to ensure the inclusion of high-value research.

Discussions and results obtained. Numerous studies confirm that the Dark Web serves as a hub for criminal activity; however, its role in facilitating crime varies depending on sources. A key issue cited is that anonymization tools provide new channels for money launderers, drug traffickers, and other market actors to conduct illicit transactions with minimal risk of detection.

Another frequently mentioned problem is that encryption and privacy-enhancing technologies make it easier for law enforcement authorities to track transactions and apprehend criminals. Studies demonstrate that cybercrime-as-a-service has expanded significantly, with ransomware kits, malware, and hacking tools being sold on underground markets. Reports from Europol and Interpol indicate that cybercriminals commonly exploit the anonymity of cryptocurrencies to conduct illegal financial transactions. However, law enforcement agencies have developed blockchain forensic techniques to trace illicit financial flows, providing a growing countermeasure.

Legal frameworks remain fragmented in addressing Dark Web-related crimes. The

United States, the European Union, Russia and China each have distinct regulatory and enforcement approaches reflecting their geopolitical interests. Literature suggests that while the USA and EU emphasize global cooperation in combating cybercrime, Russia and China focus more on national security and censorship. A common theme throughout literature is that enforcement across borders is hindered by jurisdictional and legal challenges.

The literature reviewed in this research presents a multifaceted perspective on preventing crime on the Dark Web, with technological and legal innovation constantly under attack by new developments in the field of cybercrime. The research shows that there has been significant progress by governments and law enforcement agencies in combating crime on the Dark Web, but there are monumental challenges ahead in balancing the enforcement of security and the right to privacy.

Crime on the Dark Web is not a limited problem, but an evolving global issue that must be addressed through a combination of technological innovation, international legal cooperation, and ethical legislation.

Law enforcement agencies must be flexible as encryption and anonymization technologies continue to evolve and develop cooperative, internationally coordinated strategies that respect human rights but continue to disrupt cybercriminal networks.

A. Internet Structure: Surface Web, Deep Web, Dark Web. Most people think of the internet as the websites they browse every day – news sites, virtual shopping malls, and social networks. But this accessible part of the web, the Surface Web, is only a small part of the overall digital landscape. Beneath it lies the Deep Web, a much larger, hidden part of the internet that most users access every day without even realizing it.

The Surface Web is made up of publicly available websites that have been crawled and indexed by search engines like Google and Bing. They are accessible through regular browsers and are open to anyone, barring special licenses [1].

In comparison, the Deep Web is made up of all the web pages that are not accessible through search engines. These include personal databases, research papers, paid sites, and information about individuals from cloud providers. Logging into your email, reading a banking page or browsing other social media, except for public sites, provides access to the Deep Web [1].

The Dark Web is an anonymous portion of the Internet that is outside the reach of search engines and requires special software to use. Unlike the publicly accessible Surface Web, the Dark Web is intentionally hidden to allow for user anonymity. This anonymity is facilitated by encryption techniques and routing protocols that conceal both the identity and location of users, making it a site for privacy-oriented activities as well as illicit transactions.

The Dark Web is a subset of the Deep Web, all content that is not searchable by search engines. The Deep Web contains a vast amount of authentic information, such as medical records, academic databases, subscription sites, and corporate websites. While the Deep Web is primarily for secret and restricted online exchanges, the Dark Web is known for containing anonymous marketplaces, forums and encrypted communication web pages. The Deep Web and the Dark Web essentially share the same element of not being indexed, but differ in that the latter adds a level of interest in anonymity and encryption that serves to differentiate it, as well as a more contested part of the hidden internet.

Table 1. Comparison of Internet layers

Layer	Description	Access Mechanisms	Content Type
Surface Web	Publicly accessible content indexed by search engines	Standard web browsers and search engines	Websites, blogs, social networks, online shopping platforms
Deep Web	Non-indexed content requiring specific access methods	Targeted searches, authentication, or specialized tools	Databases, proprietary data, personal information, unlinked content
Dark Web	Anonymous and hidden content requiring specialized software	Tor, Freenet, I2P, and other anonymity tools	Illicit marketplaces, whistleblowing platforms, privacy-focused communication

B. Understanding the Dark Web: How it works and the differences between the Deep Web and the Dark Net. The Deep Web is often mistakenly equated with the Dark Web – the obscure, anonymous part of the Internet that is dedicated to illicit use. The Dark Web is just a part of the Deep Web and requires a special application to access [2].

When talking about the Dark Web, it conjures up images of shady transactions, black markets and cybercriminal hackers operating in the dark side of the internet. The reality is much more complex. To effectively understand the Dark Web, one must first distinguish between the Deep Web and the Dark Net, which tend to be confused [3].

The Deep Web contains private databases, research archives stored in universities, medical records, corporate intranets, and password-protected websites. Every time you log into your email account, look at your cloud storage or read your bank's online updates, use the Deep Web – a powerful but unexplored section of the internet that exists outside of public search engines [4].

In addition to the above, there is another realm known as the Dark Net. Unlike the Deep Web, which is not indexed, the Dark Net is an encrypted and anonymous network of networks that requires special software to enter. TOR (The Onion Router), I2P (Invisible Internet Project), and Freenet are networks designed to keep users' identities and locations hidden. Created for legitimate purposes – journalistic freedom, encrypted communication, and anti-censorship – the Dark Net has also become a haven for more dangerous activities [5].

The most common illicit transactions are the sale of banned substances, counterfeit documents, firearms and stolen financial data. Dark Web marketplaces such as Silk Road, AlphaBay and Hydra have demonstrated how the Dark Web provides a safe and anonymous environment where sellers and buyers of illegal goods can meet without any physical contact, thus reducing the possibility of interference from law enforcement [6].

Cybercrime as a service has also increased with attackers selling malware, ransomware kits and hacking tools that allow even inexperienced cybercriminals to carry out sophisticated cyberattacks. There have also been reports of terrorist financing, child exploitation and human trafficking, through cryptocurrency transactions used to cover identities [7].

The basis for anonymity on the Dark Web is derived from TOR (The Onion Router) and I2P (Invisible Internet Project), where clients can communicate without revealing their true IP addresses. TOR routes traffic through multiple encrypted nodes, making it impossible for law enforcement to track user activity. Similarly, I2P exists with a peer-to-peer infrastructure that decentralizes communications, making it even more difficult to intercept or trace transactions [8].

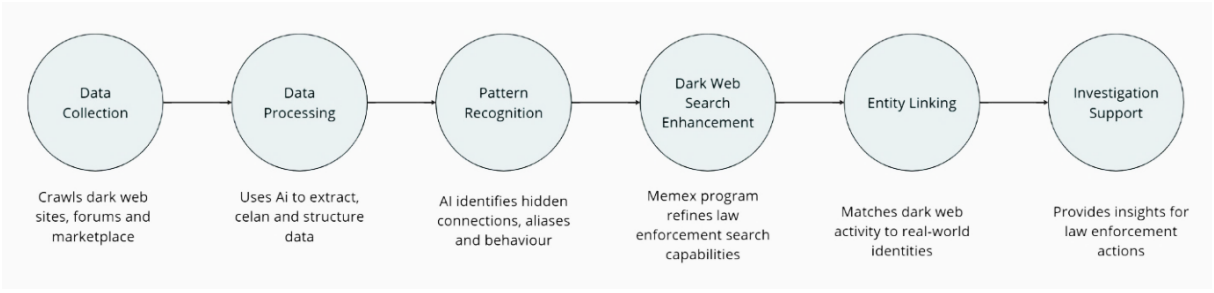
C. **Technological approaches to combat crime on the Dark Web**. Law enforcement agencies and cybersecurity professionals are increasingly using advanced technologies such as artificial intelligence (AI), Web 3.0, Blockchain, and IoT to address these shortcomings.

AI-based digital forensics plays a critical role in identifying, tracking and investigating illicit activities on the Dark Web. Machine learning techniques can be used to recognize illicit transactions, identify fraudulent transactions, and predict criminal activity. AI platforms provide law enforcement with actionable insights by analyzing large amounts of data from Dark Web sites and encrypted communications [9].

MIT Lincoln Laboratory has been a leader in creating AI technologies to aid in investigating the Dark Web. Most notably, it is collaborating with the Defense Advanced Research Projects Agency (DARPA) on the Memex program to enhance law enforcement's ability to search the Dark Web [10].

Researchers at the lab have developed machine learning algorithms that connect user accounts across different Dark Web forums. They look for similarities in writing styles, usernames and usage patterns to establish connections between multiple user accounts. This allows investigators to track activity across a range of platforms, even when individuals use different pseudonyms to hide their identities (see Figure 1) [11].

Figure 1. AI Workflow in Dark Web Investigations – MIT Lincoln Laboratory & DARPA Memex Program

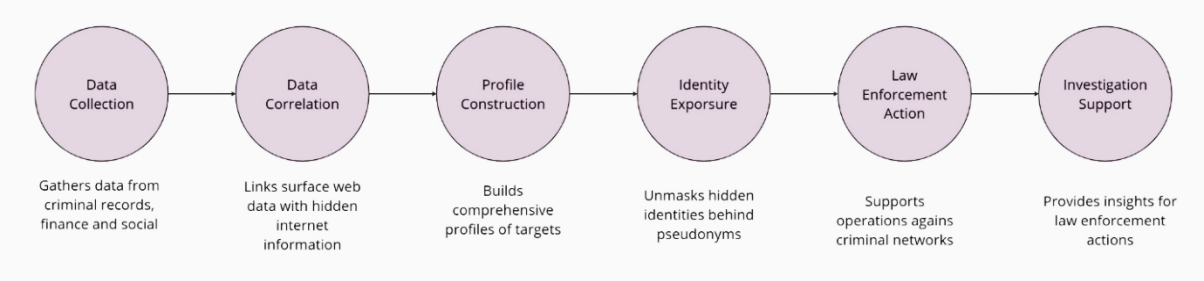


At the same time, Palantir Technologies has developed an artificial intelligence platform, Palantir Gotham that collects information from a variety of sources. The platforms can collect information from various databases, such as criminal records, financial transactions and social media, to build extensive profiles of targets of investigation [12]. With minimal or no initial data, such as a name paired with a license plate number, Palantir's system can extract data: email addresses, phone numbers, home addresses, social security numbers and bank accounts, giving investigators a complete picture of a suspect's associates and activities [13].

By correlating data from the Surface Web and standard databases with information from the Deep Web, Palantir's AI capabilities help law enforcement agencies expose the

true identities behind online gamers' pseudonyms, enabling the dismantling of criminal organizations operating in encrypted online environments (see Figure 2).

Figure 2. AI Workflow in Palantir Gotham for Law Enforcement



In addition to AI technologies, blockchain mechanisms, as an open and decentralized ledger system, represent both an opportunity and a challenge for law enforcement. The anonymity of cryptocurrencies such as Monero and Bitcoin is exploited by criminals to make purchases on Dark Net markets [14].

Through transaction patterns and the connection between wallet addresses, security agencies and researchers can uncover the money trails of cyber terrorists. Decentralized identification, a Web 3.0 innovation, can further enhance security by reducing anonymity in online transactions while preserving confidentiality in legitimate transactions [14].

Integrating IoT devices with AI-based police systems improves real-time surveillance and crime prevention operations. Networked devices, smart cameras, and biometric sensors can be used to monitor illegal goods and track criminal networks. Predictive policing models also use artificial intelligence to analyze crime patterns and predict future criminal activity [15].

However, IoT security implementations are also prone to data privacy issues as well as cybersecurity threats. IoT networks need to be defended against hacking, as compromised devices could be used to enable cybercrime rather than prevent it.

The war on dark web crime requires an interface of AI, blockchain analytics and smart policing integrated with IoT. These are the tools that hold the keys to successful outcomes, but they depend on continuous refinement and ethical oversight. The balance between enforcing security regulations and citizens' right to privacy is an ongoing challenge in implementing digital forensics tools to deter cybercrime.

D. Potential risks of government overreach in monitoring the Dark Web and the challenges of privacy-enhancing technologies. The intersection of government surveillance, privacy rights, and the war on crime on the Dark Web is complicated. While surveillance of the Dark Web is essential for national security as well as for maintaining public order, over-regulation risks undermining citizens' right to privacy. Technical tools that enhance privacy and complicate law enforcement are part of this, while behavioral analysis is morally questionable for establishing criminal intent. Government dominance of the Dark Web is a serious privacy and civil liberties issue. Surveillance regimes that monitor online behavior have the side effect of invading the privacy of people living legally, especially those whose use of anonymity is necessary for activities such as political dissent, journalism, or whistleblowing. Enforcement efforts that rely on large archives threaten to stifle free speech and open communication on the Internet. Laws that allow governments

to bypass encryption or exploit loopholes in anonymity networks can compromise the security of all Internet users, not just criminals [16].

Government attempts to introduce backdoors into encryption mechanisms have been widely criticized for weakening global cybersecurity, exposing sensitive data to malicious attacks.

China has been the most active in trying to block access to anonymity tools. The government has attempted to restrict access to Tor by blocking its website and by attempting to disrupt the TOR browser's anonymization services. Such action is justified by laws against the dissemination of material found to "subvert state power" or "undermine national unity." The Chinese government sees unchecked anonymity on the Internet as a threat to its ability to guide public discourse and has responded by censoring and monitoring encrypted messaging [17].

Law enforcement agencies are increasingly turning to AI-powered behavioral analytics to detect suspicious activity on the Dark Web. Predictive models attempt to detect potential criminal activity before it occurs by monitoring user activity, transactional patterns, and communication behavior. While the tactic has been beneficial in uncovering some threats, it raises concerns about privacy, due process, and fairness in AI algorithms. The threat to privacy posed by false positives can lead to illegal surveillance of disproportionate numbers of privacy-conscious citizens who use anonymity tools in good faith. Predictive policing strategies also risk reinforcing pre-existing biases without checks, leading to intrusive surveillance of marginalized communities with a history of subordination [18].

While governments' monitoring the Dark Web is necessary to combat cybercrime, excessive spying poses a threat to ordinary citizens. Privacy-enhancing technologies make enforcement more difficult, while behavioral analysis through artificial intelligence raises ethical and legal issues. Finding the right balance between freedom and security remains a major concern in the evolving context of digital governance.

E. Crime Prevention Strategies on the Dark Web. A comparative analysis of the USA, Russia, China and the EU (Interpol/Europol). The Dark Web poses a threat to law enforcement agencies around the world because it offers illicit services such as cybercrime, drugs and money laundering while using comparative anonymity tools. Different countries and international bodies have different methods of addressing these threats. The United States, Russia and China, as global cyber powers have established high-level technological and legal systems, while the European Union has based cross-border cooperation on agencies such as Europol and Interpol (see Table 2).

Russia has a two-pronged strategy: strict domestic controls on anonymizing technologies and state-led cyber operations. Unlike Western countries that use forensic analysis and international cooperation, Russia's approach is based on censorship, controlled cybercrime and selective law enforcement actions.

The Russian government has criminalized the use of VPNs, Tor, and other anonymity technologies because these networks are used to spread extremist content, cybercrime, and threats to national security [19]. In 2017, Roskomnadzor, the Russian media and telecommunications regulator, ordered internet service providers to block the websites of VPNs that do not comply with state surveillance. In addition, authorities regularly shut down dark web marketplaces and forums, restricting access to illicit goods while also monitoring users' activity for intelligence gathering purposes [20]. In December 2024, a

Russian court sentenced Stanislav Moiseyev, who was accused of being the mastermind behind the infamous dark web marketplace Hydra, to life in prison for organized crime and drug trafficking. Fifteen co-defendants were sentenced to terms ranging from 8 to 23 years in prison and fined a total of 16 million rubles ($150,000). Hydra, which was founded in 2015, was one of the largest darknet marketplaces selling illegal drugs, stolen data, counterfeit currency and criminal computer products. The platform had approximately 17 million customer accounts and over 19,000 seller accounts at its peak, with estimated revenues of over $1.3 billion before it was shut down. In April 2022, German law enforcement and authorities shut down Hydra, seizing its servers and cryptocurrency storage, thereby paralyzing its operations [21].

Unlike Russia, where technical measures are used by law enforcement to track cybercriminals, real-world identity validation is the main approach in China. China implements the strictest internet censorship through the Great Firewall, a surveillance and censorship regime that blocks Tor, I2P, and most Dark Web sites. Users are required to link government-provided identities to online activities, such as cryptocurrency transactions [22].

China also uses artificial intelligence-based surveillance, reading encrypted messages using deep packet inspection and using software-based recognition technologies to identify users connecting to censored networks. The country's anti-cryptocurrency laws limit anonymized currency so that criminals cannot launder money through digital currency [22].

In contrast to national law enforcement, the European Union relies on multinational cooperation to combat crime on the Dark Web. Europol, through the European Cybercrime Centre (EC3), launches large-scale operations against criminal financial markets and systems. Interpol coordinates information exchange and provides forensic capacity to track Dark Web activity across borders [23].

Europol has played a key role in dismantling significant dark web markets, including Operation Onymous to take down Silk Road 2.0 and Operation Dark HunTor, which led to the arrest of 150 dark web drug traffickers. It also cooperates with national police forces to track cryptocurrency transactions and dismantle money laundering networks [23].

Interpol's Cybercrime Directorate provides member countries with technical assistance and tools to track dark web activity. Its International Child Sexual Exploitation (ICSE) database is used to identify perpetrators and release victims of cyber abuse. Implementation challenges remain at EU level, primarily jurisdictional boundaries and data protection laws that interfere with cross-border investigations. Unlike China or Russia, where governments can circumvent encryption, the EU's General Data Protection Regulation (GDPR) imposes strong privacy rights and mass surveillance requires legal authorization [24].

The USA is a leader in law enforcement technology, using a combination of cyber forensics, artificial intelligence (AI), and blockchain analytics to track and disrupt criminal activity on the Dark Web. The Drug Enforcement Administration (DEA), FBI, and Department of Homeland Security (DHS) collaborate on massive operations such as Operation DisrupTor, which resulted in the arrest of 179 darknet drug traffickers and the seizure of $6.5 million in proceeds of crime [25].

Perhaps the USA's most powerful tool is its use of blockchain forensics, where agencies track illegal cryptocurrency transactions using tools such as Chainalysis. Such systems facilitate real-time detection of suspicious activity and help expose cybercriminals

attempting to launder money through Bitcoin and privacy coins such as Monero [26]. Predictive analytics and AI-based monitoring also facilitate proactive crime prevention by detecting patterns of activity in darknet transactions. These proactive approaches also have privacy concerns, particularly regarding mass surveillance and overreach. The encryption backdoor controversy that has gripped the United States is a classic cat-and-mouse game between national security and civil liberties [27].

Table 2. Comparative analysis and challenges

Stat/ Regiunea	Strategia primară	Instrumente	Provocări
USA	Cyber Forensics, Blockchain Tracking	AI Surveillance, Chainalysis, Operation DisrupTor	Privacy Concerns, Encryption Debate
Russia	Censorship, selective law enforcement	VPN bans, darknet raids, state-backed hacker groups	Links to cybercrime, lack of international cooperation
China	Full control over digital activities	Great Firewall, AI surveillance, strict KYC laws	Suppression of digital privacy and human rights
EU	International cooperation and targeted enforcement	Europol EC3, Interpol forensic tools, GDPR compliance	Legal barriers to data exchange, jurisdictional conflicts

Conclusions. Combating crime on the dark web is a complex technological, legal and cultural issue at the intersection of technology, privacy, and the law. The research has shown that while law enforcement has made great strides in combating cybercrime through artificial intelligence, blockchain traceability, and predictive analytics, cybercrime is evolving and using cryptography and anonymity technologies to circumvent the law. The cross-border fragmentation and decentralized sites of the dark web pose a threat to law enforcement, and therefore multilateral cooperation between nations is essential.

While AI-based behavioral analytics and internet surveillance have been useful in catching criminal activity and shutting down dark web markets, they are again leading to unjustified state intrusion, mass data espionage, and violations of citizens' right to privacy. Balancing security needs with defending core freedoms is a big question mark as governments demand more access to encrypted messaging apps and hidden transactions. Global cooperation, open policies, and continued innovation in cybersecurity will be necessary in the attempt to combat evolving threats on the dark web without compromising digital rights in the name of mass surveillance.

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THE INFORMATION SPACE INFLUENCE ON CHILDREN'S PSYCHOLOGICAL STATES DURING THE WAR

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Summary

The article is concerned with the impact of the information space on the psychological state of children experiencing war, with a special focus on the risk of suicidal behaviour. In the context of war, children face unprecedented levels of stress, trauma and uncertainty, which is exacerbated by uncontrolled access to videos and photos of violence, destruction and death in the online environment. The risks that children may face on the Internet during wartime are described. The risk factors for children's suicide in wartime are considered: trauma as a result of exposure to visual and textual content that reflects the horrors of war; the impact of propaganda and fake news on the formation of negative emotions, fear and anxiety; cyberbullying and online exploitation; stigmatisation; social comparison; social isolation; lack of a safe information space.

The author analyses psychological and pedagogical issues related to the formation of safe behaviour of children in social networks, prevention of suicidal behaviour of children in the context of the negative impact of information and communication on the Internet and social networks. It is determined that the protection of children in the digital environment is a set of measures aimed at increasing their media literacy and developing critical thinking; creating safe online platforms for children; and developing psychological support programmes for children affected by war.

The study emphasises the need for a comprehensive approach to protecting children from the negative impact of the information space during the war, in order to prevent suicidal behaviour and ensure their psychological well-being.

Keywords: information space, war, child, prevention, psychological states.

Introduction. In the context of war, when traditional social structures are disintegrating and the psychological state of the population, especially children, is characterised by a high level of trauma, the study of the impact of the information space on children's suicidal behaviour is of utmost relevance.

The theoretical significance of the study lies in the need to conceptualise the impact of the information environment on the formation of suicidal intentions in children experiencing the effects of war-related stress. Analysing the mechanisms of influence of disinformation, propaganda, cyberbullying and suicidal content on the cognitive and emotional processes of a child will expand the theoretical framework of suicidology and psychology of crisis states.

The practical significance of the study is determined by the need to develop effective strategies for the prevention of suicidal behaviour among children in armed conflict.

The social significance of the study lies in the need to protect the most vulnerable category of the population – children in war. The study will help to identify and minimise the negative impact of the information space on their mental health and life.

Children experiencing war face extreme psychological stress, including the loss of loved ones, destruction of homes, fear and uncertainty. This traumatic experience makes them particularly vulnerable to the negative impact of the information space. During the war, children spend a lot of time on the Internet, in particular in messengers, looking for information, communicating with friends or trying to escape from reality. This increases the likelihood of potentially harmful content (scenes of violence, propaganda or suicidal materials) having a negative impact on the child's still-unformed psyche. War can exacerbate social conflicts and increase the incidence of cyberbullying, especially among children who have been displaced or lost contact with their usual environment. Online bullying can increase feelings of isolation and hopelessness, which can lead to suicidal thoughts.

In times of war, the information space is filled with disinformation and propaganda that can manipulate children's minds and distort their perception of reality. This can lead to feelings of helplessness, despair and, in extreme cases, suicidal behaviour. In times of war, access to psychological assistance may be limited, making children particularly vulnerable to the negative impact of the information space.

Given these factors, studying the impact of the information space on children's suicidal behaviour during war is extremely important for identifying risk factors and developing preventive measures.

The information space is not just a collection of data, but a complex social system where information is created, disseminated and assimilated. Information is disseminated through Internet channels (websites, social networks, e-mail); mass media (television, radio, print media); and personal communication (conversations on social media, meetings, lectures, etc.). At the same time, information can be disseminated instantly (online broadcasts) or gradually (print media), and can be publicly available (open websites) or limited (paid subscriptions).

It is important to understand that suicide is a complex phenomenon influenced by many factors, and the information space is only one of them, which can have both direct and indirect effects on suicidal thoughts and behaviour.

Direct influence:

1. *Suicidal content*. The Internet may contain graphic descriptions of suicide, videos, instructions, and even online communities that promote suicide. Such content can provoke or reinforce suicidal thoughts in vulnerable individuals. Particularly dangerous is the so-called 'Werther effect' - a phenomenon where the number of suicides increases after the publication of information about a famous person's suicide.

2. *Cyberbullying*. Online bullying and harassment can have a devastating effect on the psyche, especially in children and adolescents. Cyberbullying can lead to feelings of helplessness, isolation and hopelessness, which are risk factors for suicide.

3. *Online communities*. Some online communities may encourage suicidal behaviour by offering 'support' and 'understanding'. Such communities can create a sense that suicide is the only way out of problems.

Indirect impact:

1. *Misinformation*, i.e. the spread of false information about mental health, can make it harder to seek help.

2. *The stigmatisation of mental disorders* in the information space can discourage people from seeking help.

3. *Social comparison*. Social media often showcase idealised lifestyles, which can lead to feelings of dissatisfaction and hopelessness. Constant comparison with others can increase feelings of isolation and loneliness.

4. *Information overload*. Too much information can cause stress and anxiety, which are risk factors for suicide. Constantly being in the online environment can lead to exhaustion and emotional burnout.

In times of war, children may face the following risks on the Internet [2]:

1) Information and psychological special operations (IPSO) – the spread of disinformation, planned and coordinated actions aimed at influencing people's emotions, thoughts and behaviour. Children who are exposed to false information about horrific events may experience intense fear, anxiety and panic. Misinformation can make them feel helpless and unsafe, which in turn can lead to difficulties sleeping, eating and concentrating. In addition, children may start to believe false rumours and fake news, which distorts their understanding of the world and can lead to negative stereotypes and prejudices.

2) Fake news – a publication, false information that is disseminated deliberately with the intent to deceive or mislead. Fakes can encourage children to engage in aggressive or dangerous behaviour. They can become victims of manipulation and be used to spread false information. Constant exposure to disinformation can lead to the development of post-traumatic stress disorder (PTSD), depression and other mental problems in children.

3) Publishing harmful content. Viewing traumatic images can lead to long-term psychological problems, such as PTSD, which is characterised by recurring flashbacks, avoidance of certain situations and hyper-arousal. Children exposed to online violence may lose their trust in the world and their sense of safety, which negatively affects their social and emotional functioning. In addition, viewing violent content can lead to children perceiving violence as normal and engaging in aggressive behaviour, both online and in real life.

4) Bots – programs created by humans that follow a certain algorithm of actions and can actively spread false information, fake news and propaganda, which can confuse children and lead to the formation of incorrect ideas about war, its causes and consequences, as well as spread panic and fear. Bots can spread traumatic content, such as videos of violence or images of destruction, which can cause psychological trauma to children. They may create fake profiles to pose as friends or relatives of children and use this to manipulate or blackmail them.

Bots can also be used for cyberbullying and online harassment of children by spreading offensive messages, threats or personal information. It is especially dangerous when bots are used to disseminate a child's personal data, to blackmail and further recruit children into extremist groups or to spread extremist ideology.

5) Secret missions – requests to provide photos, videos, geolocation to obtain the location of the Ukrainian military or crowds of people; recruitment to sabotage groups; online games with dangerous tasks; groups on social media that offer self-harm, violence or suicide.

6) Anonymous chat rooms – adding a child to a chat room where they do not know anyone, starting communication and gaining trust for the purpose of blackmail, extortion, etc. Manipulators can use anonymity to impersonate other people and deceive children. Anonymity can encourage aggressive behaviour, and children can become victims of online bullying, harassment or sexual abuse. In addition, in times of war, children may be vulnerable to recruitment by extremist groups that use anonymous chat rooms to spread their ideology.

7) Online fraud. With the growth of charity fundraisers and donations, fraudulent schemes are emerging that try to obtain money or personal information from children.

8) Danger in online games, namely the possibility of interacting with strangers who may bully or expose the child to inappropriate behaviour.

9) Cyberbullying – systematic harassment and violence through electronic communication. During war, children spend more time online, which increases their vulnerability to cyberbullying. Online learning and social networking can create additional opportunities for bullying. Children who have experienced traumatic events can be both victims and aggressors of cyberbullying. Cyberbullying can include insults related to nationality, place of residence or past experiences.

It is important to remember that the information space in times of war becomes an extremely powerful factor that can have both a positive and negative impact on children's mental health, including their suicidal behaviour.

Negative impact:

1. *Traumatic content*. Constant access to news about hostilities, destruction, and loss of loved ones can cause post-traumatic stress disorder (PTSD), depression, and anxiety in children. Videos and photographs of violence and death can traumatise children's psyches and cause intrusive thoughts, leading to feelings of helplessness and hopelessness.

2. *Information overload*. A constant flow of information, especially negative information, can cause children to feel helpless and hopeless. Children may feel overwhelmed and unable to cope with their emotions.

3. *Cyberbullying and disinformation*. In times of war, the risk of cyberbullying increases, which can cause deep psychological trauma to children. Disinformation and fake news can cause fear, anxiety and panic in children.

4. *Suicidal groups and content*. There are groups on the Internet, especially on social media that promote suicide and manipulate children. Children may come across content that describes ways to commit suicide or justifies suicidal behaviour.

Positive impact:

1. *Information support*. The Internet can serve as a source of information about psychological help and support. Online platforms can provide children with opportunities to communicate with psychologists and other professionals. Online communities can provide support and understanding for people experiencing emotional difficulties. Online counselling and hotlines can provide access to professional help.

2. *Social connections*. Social media and messengers can help children stay in touch with friends and family, especially if they are in different cities or countries. Online communities can provide children with a sense of belonging and support.

3. *Educational resources*. The Internet can be a source of educational resources that help children to distract from negative thoughts and develop their skills. Online courses and webinars can help children learn to manage their emotions and stress.

Child protection in the digital environment is a set of measures aimed at ensuring the safety and well-being of children when they use digital technologies, such as the Internet, mobile phones, computer games and social media.

The main aspects of child protection in the digital environment include [1; 2]:

1. Teaching children to behave safely online through the development of critical thinking, digital literacy (media literacy) and the recognition of harmful information. Teaching children the rules of safe communication on the Internet; safe use of personal data; rules of safe online shopping and financial transactions; safe and responsible use of digital technologies.

2. Protecting children from harmful content. Use of technical means to restrict access to dangerous websites; filtering and blocking inappropriate content (violence, pornography, aggression, etc.).

3. Involvement of parents, teachers and society to provide necessary information and create a safe space for children. Parents should take an active interest in their children's online activities, establish rules for using the Internet and teach them safe behaviour. Educators should integrate digital safety into the educational process and provide children with the necessary knowledge and skills. Society should create a safe online environment for children, develop and implement appropriate legislative and regulatory mechanisms.

4. Develop and implement appropriate legislation aimed at protecting children in the digital environment and ensuring their legal protection. In particular, combating cyberbullying, harassment and other forms of online violence; protection against the dissemination of child pornography and other forms of sexual exploitation of children on the Internet; ensuring confidentiality and protection of children's personal data on the Internet; combating online fraud and other forms of financial exploitation of children on the Internet.

Let's take a closer look at the recommendations on the specifics of teaching children safe behaviour on the Internet. It is important to start training from an early age, when children are first introduced to digital devices. And such training should be a continuous process that adapts to the age and level of understanding of the child. It is necessary to create an open and trusting atmosphere where children are not afraid to talk about their experiences online, including negative situations. First of all, you should teach your child to contact their parents if they are worried about something in their life (real or virtual). At the same time, you need to support your child and avoid blaming them if they are a victim of cyberbullying or other online danger.

Children should be taught to critically evaluate the information they find on the Internet. It is important to explain that not all information on the Internet is reliable and that sources should be checked. Children should understand that they should not give out their personal details to anyone online. This includes photos of documents, exact address, school and class. Names of pets, mother's maiden name and other data that are often used as password recovery questions should also not be published in the public domain. Surname, first name, patronymic, address, date of birth, etc. should only be entered on government websites or when buying tickets. Children should be taught not to disclose personal information such as address, phone number or passwords.

The child should understand that anonymity is an illusion and is not possible on the Internet. Children and teenagers often become sources of online threats and offences

because they do not always understand that any action on the Internet always leaves a trace. “Any personal information that a teenager posts on the Internet can be used by other users against them. It is necessary to learn how to set up personal data protection tools, to set privacy settings on all visited pages. For example, Facebook has a tool in the account settings that will help you change the audience of publications from “available to all” or “friends of friends” to “friends only” [1, p.29].

It is important to explain to children what cyberbullying is, how to recognise it and how to respond to it. For example, they should not make dubious acquaintances online, as a dangerous criminal, scammer or terrorist may be hiding behind an attractive avatar. Children perceive online communication as a harmless game, not realizing that they are communicating with real people who may not always be kind and honest and who pursue their own interests online. Children should be taught to report any cases of cyberbullying or other unpleasant situations on the Internet to adults.

From the very beginning, when a child gets access to the Internet, it is essential for adults to set clear rules for Internet use, including time spent online and websites allowed. It is worth installing parental control software to restrict access to undesirable content. At the same time, adults should follow the rules of safe online behaviour themselves and be a positive example for children. Regular communication with children about their online activities, interest in their experience and willingness to answer questions will help them use digital technologies safely and responsibly and protect them from online dangers.

When developing the guidelines for developing safe behaviour of children on social media [1], parents often asked us questions: “Is it possible to ‘monitor’ a child’s social media and online communication?”. This is a complex issue that requires a balanced approach. On the one hand, parents have the right and duty to protect their children from potential online threats. On the other hand, it is important to respect the child’s privacy and build trusting relationships. “It is possible, even necessary, to monitor a child’s communication on social media, especially if the teenager stops communicating with parents altogether and spends his or her time online. But this should be done with respect for the child’s personal space and privacy. It may be that there is no threat yet, but the child’s trust can be lost forever” [1, p.33].

Today, there are many apps that allow parents to track their child’s online activity, including websites visited, time spent online, and even some social media messages. These apps can also filter out inappropriate content and restrict access to certain websites. Some social networks offer parental controls that allow parents to see their child’s activity on the platform. However, full monitoring of messages in private chats is often not possible.

Parents should remember that children, and especially teenagers, have a right to privacy. Excessive monitoring can violate this right and undermine trust. Open communication with your child is a more effective way to ensure their safety than covert monitoring.

“A frank conversation should be based on the desire to help the child and show your concern for him or her; as a story about your thoughts and feelings about the child’s behaviour, especially if there are certain alarming signals in his or her behaviour. The general advice to parents is to communicate with their children, talk about everything: successes and problems, life goals, dreams and desires of the child. If there is no contact

with the child, or if the child does not make contact, does not want to talk about any topics, this is a serious signal to parents that this contact needs to be restored. Perhaps it is necessary to consult a specialist, in particular a child psychologist" [1, p.33].

Primary prevention of negative phenomena is universal for use in the children's environment. In the context of the negative impact of the information space and suicide prevention among children at school, it should include a set of measures aimed at creating a safe and supportive environment, developing emotional resilience and coping skills, namely:

1. Creating a safe and supportive environment by teaching teachers to recognize signs of suicidal behaviour; developing their skills of effective communication with children in crisis; creating an algorithm of actions in case of detection of suicidal risk; involving qualified psychologists and social workers.

2. Educational work among students:

– Lectures and discussions about psychological health and the importance of seeking help; signs of suicidal behaviour; myths and facts about suicide; resources where help can be obtained.

– Distribution of information materials, booklets, leaflets and posters with information on suicide prevention, contact details of support services and psychological help.

– Teaching children about Internet safety; developing media literacy and the ability to recognise true information from fake information.

3. Development of emotional resilience and coping skills:

– Trainings for students on developing emotional self-regulation and stress management skills: learning effective coping strategies and conflict resolution; developing a positive attitude towards oneself and others.

– Holding thematic class hours to discuss issues of psychological health, emotions and relationships; analysing life situations and finding constructive solutions.

4. Work with parents:

– Holding parental meetings and lectures on suicide prevention.

– Providing parents with information about online threats and dangers (cyberbullying, sexting, stalking, sexting, online grooming, etc.).

– Providing parents with tools and resources to create a safe online environment.

Thus, it is important to remember that protecting children in the digital environment is an ongoing process that requires constant attention and efforts from all stakeholders; it is a set of measures aimed at increasing their media literacy; creating safe online platforms for children; developing psychological support programmes for children who have been negatively affected by the information space.

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THE IMPORTANCE OF SPECIAL CIRCUMSTANCES OF PENALTY MITIGATION IN THE PREVENTION AND COMBATING OF CRIMINALITY IN ROMANIA

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Summary

Criminality represents a matter of major concern for states worldwide. Consequently, each state has developed a criminal policy aimed at preventing and combating crime through specific legal measures.

Special circumstances for penalty mitigation support the fight against criminality by serving both preventive and coercive functions, ensuring the application of criminal sanctions as provided by special laws.

Despite the adoption of new criminal legislation and the reconfiguration of the application of mitigating circumstances, the scope of their applicability and the timeframe within which they may be invoked remain far from being uniformly clarified at the national level. This is the case despite multiple rulings by the Constitutional Court admitting exceptions of unconstitutionality or interpretative decisions, as well as decisions by the High Court of Cassation and Justice aimed at unifying judicial practice in the field under examination. As such, an in-depth analysis of special circumstances for penalty mitigation in Romanian criminal law is necessary to contribute to a clearer understanding and practical application of these provisions, with the ultimate goal of preventing and combating criminality in Romania.

Keywords: criminality, prevention and combating of criminality, individualization of penalties, special circumstances for penalty mitigation, criminal policy, special laws, Romanian criminal law.

"*Criminality increases when social relations are unstable and economic conditions are shifting*" [1, p.151]
Bosco A. 1903

Introduction. In recent times, the phenomenon of criminality has experienced an alarming expansion at a global level. Romania faces a wide range of organized crime forms, including drug trafficking, economic and financial crimes, and human trafficking. Currently, organized crime in Romania represents a socio-legal phenomenon of major importance, necessitating thorough analysis and the development of a strategy for its prevention and combat. Following the Revolution of December 1989, criminality expanded rapidly across the country, prompting well-organized and structured efforts to criminalize and sanction organized crime through the penal legislation.

Moreover, over time, several strategies have been developed to counter organized crime, the most recent being the National Strategy Against Organized Crime for 2021-2024, introduced by the Ministry of Justice.

The legal framework governing organized crime is outlined in Law No. 39/2003, which establishes specific measures for preventing and combating organized crime at both national and international levels. Alongside Law No. 39/2003 on the Prevention and

Combating of Organized Crime, other legal acts regulate various forms of offender plurality, including the Criminal Code and several special laws, which will be the focus of this article. Organized crime represents a structured form of offender plurality [2, p.13].

Organized crime is a dynamic phenomenon that has developed significantly at the national level, continuously adapting its methods to align with the country's market economy, the penal legislation in force, and communication technologies: "Ductility allows major criminal groups to adapt both organizationally and strategically, responding, on the one hand, to the impermeability requirements of investigative activities and, on the other hand, to the absolute necessity of remaining competitive, particularly when market globalization and the erasure of boundaries between mafia groups and white-collar criminals have had a decisive impact on criminality" [3, p.35].

In Romania, penal policy has placed significant emphasis on organized crime, not only through the provisions of the Criminal Code and the Code of Criminal Procedure, but also through special laws and government ordinances introducing the concept of special circumstances of penalty mitigation—elements that support the fight against criminality through both prevention and coercion. Law No. 143/2000 on the Prevention and Combating of Illicit Drug Trafficking and Use, Law No. 241/2005 on the Prevention and Combating of Tax Evasion, and Government Emergency Ordinance No. 78/2016 on the Organization and Functioning of the Directorate for Investigating Organized Crime and Terrorism, as well as for Amending and Supplementing Certain Normative Acts, constitute the special legislation in which special circumstances of penalty mitigation are described. These legal provisions play a crucial role in preventing and combating organized crime in Romania.

Methods and materials applied. The methodology of legal research represents a well-organized and structured process that any researcher must consider in the initial stage of their scientific study. Through this stage, the researcher plans the model they intend to follow in their scientific work, taking into account principles, phases, methods, techniques, and tools for the scientific investigation and understanding of legal phenomena. In another sense, methodology represents the system of the most general principles of investigation, derived from the system of the most general objective laws [4, p. 51].

The complexity of the term "methodology" arises from its composition, originating from two Greek words: "methodos" and "logos," which mean "method" and "science," respectively, and can be freely translated as "the science of method." In analyzing any legal phenomenon, the selection and application of such scientific research methods are essential. Additionally, the word "methodos" itself is composed of two words: "meta" and "odos" meaning "after the path" referring to the guide that ensures the success of any scientific investigation [5, p. 23].

The present study, concerning the importance of special circumstances for penalty mitigation in the prevention and combat of criminality in Romania, required a wide range of methods, principles, and means proportionate to the complexity of the legal topic. This is because it not only addresses the provisions regarding special circumstances for penalty mitigation found in special laws playing a significant role in crime prevention and control in Romania but also examines the phenomenon of organized crime and the concept of special circumstances for penalty mitigation in Romanian criminal law.

In the first stage of legal scientific research, an extensive review of the bibliography was conducted to gain an understanding of the scientific context regarding organized

crime. A bibliographic list was compiled, and the databases of the National Library of Romania and the Central University Library were consulted.

Next, we will briefly present the main legal research methods that will be employed throughout the article "The importance of special circumstances of penalty mitigation in the prevention and combating of criminality in Romania".

By applying historical method, the article presents in subsection II.3 the history of institutional forms responsible for preventing and combating organized crime as outlined in international strategies.

The logical method is closely related to the historical method. It was employed in the subsection defining the concepts of organized crime, strategy, individualization, and special circumstances for penalty mitigation.

The analytical method, which is a general research method based on the decomposition of a whole into its component elements and studying each separately. By using the analytical method, the special circumstances for penalty mitigation found in special criminal laws in Romania were identified throughout the article. Undoubtedly, analysis holds a primary role in the research process, but it would not yield the expected results if not complemented by synthesis.

The comparative method, logic defines comparison as an operation aimed at identifying identical or divergent elements between two phenomena. Comparing the legal systems of different states, as well as the characteristics of their branches, institutions, and norms, has proven to be extremely fruitful in the methodological process of studying legal phenomena. With this method, differences in terminology concerning the concept of organized crime – whether as a "group" or an "organization" – were identified, as presented in two normative acts of equal legal authority.

I. THE CONCEPT OF ORGANIZED CRIME.

1. Organized Crime in Romanian Criminal Law. Organized crime in Romania is influenced by multiple geopolitical factors, the primary one being the country's geographical position within the European continent. Romania is a European country located in the southeastern part of Central Europe, possessing a well-defined geopolitical and geostrategic position. The country serves as a crossroads for various trade routes connecting to the Asian continent. Over time, Romania's geopolitical position within Europe has played a significant role in the formation of organized crime groups engaged in specific illicit activities.

Due to its geographic location in southeastern Central Europe, Romania has become a target for organized crime, particularly in areas such as illegal migration, drug trafficking, and tax evasion. Numerous factors pose an increased risk to national security, presenting new challenges to public order and safety. Among these factors are the expansion of activities conducted by criminal groups operating as part of internationally experienced organized crime networks (the globalization of organized crime), the illegal migration of populations from underdeveloped states using Romania as a transit point to other European countries – thus contributing to the organized crime phenomenon – the presence of foreign nationals from high-risk countries involved in illegal activities within Romanian territory, the amplification of drug trafficking and the alteration of international smuggling routes, customs and commercial fraud occurring at the state border, the presence of a permissive legal framework for commercial enterprises engaging in foreign trade operations, and the lack of effective legal measures to combat shell companies [6, p.62-63].

Terminologically, the concept of organized crime is defined in Law No. 39/2003 on the prevention and combating of organized crime. According to Article 2, letter a), first clause, an "organized criminal group" is defined as "a structured group, composed of three or more persons, that exists for a period of time and acts in a coordinated manner with the purpose of committing one or more serious crimes in order to obtain, directly or indirectly, a financial or material benefit". In previous legislation, the term "criminal group or organization" was also found in Law No. 682/2002 on witness protection, under Article 2, letter l). To avoid conceptual ambiguity, the current legislation has eliminated the definition of this concept from two separate laws – Law No. 682/2002 on witness protection and Law No. 39/2003 on the prevention and combating of organized crime. The terminology related to organized crime is now exclusively regulated under Law No. 39/2003. Furthermore, the second clause of Article 2, letter a), explicitly clarifies what does not constitute an organized criminal group: "A group that is formed occasionally for the immediate commission of one or more crimes, which lacks continuity, a determined structure, or predefined roles for its members within the group, does not constitute an organized criminal group" [7].

2. Transnational Crime. Following the analysis of the organized crime phenomenon in Romania and at European level, it has been concluded that the phenomenon of transnational crime is determined and facilitated by the existence of several important elements: the accessibility of state borders and the inability of authorities to control all crossings, both entries and exits from the country; the differences in national legislations, which are sometimes contradictory regarding trade, taxation, and banking regulations, as well as the differing legal treatment applied; the existence of a European Penal Code and a political will to systematically combat organized crime [6, p.66].

II. National and international strategies for the prevention and combat of organized crime.

1. Strategy – conceptual definition. The totality of activities through which objectives, instruments, and methodological research tools are established to achieve one or more goals defines the concept of strategy.

Each state has a well-structured criminal policy, based on a criminal strategy whose primary purpose is the prevention and combat of organized crime. In general, the dynamic nature of organized crime determines the constant change and evolution of each penal strategy aimed at combating this phenomenon.

2. National Strategy for the prevention and combat of organized crime. The organized crime present in Romania after 1989 underwent a significant transformation. It manifests differently in a free society, where citizens are no longer restricted in terms of freedom of movement. The phenomenon of money laundering emerged, developing a final stage in the financial trajectory – the reinvestment of illicit funds into legal activities. Often, members of money laundering networks become respectable individuals in society.

Drug consumption existed before 1989, but it was primarily preferred by individuals in the upper echelons of power, who were generally interested in cocaine, considered a luxury drug. Additionally, the possession of foreign currency was prohibited, which led to the emergence of currency traffickers. After 1989, organized crime expanded significantly due to the migration of Romanian criminals to the West, where they associated with other powerful criminal groups at the European level, committing serious offenses.

Currently, in response to this context, Romania has developed the National Strategy

against Organized Crime for the period 2021-2024, which outlines five main objectives for preventing and combating organized crime. These five strategic objectives are represented by: increasing the capacity to prevent and build resilience against the phenomenon; developing national institutional capacity to fight organized crime; strengthening intervention against organized crime; limiting the access of organized crime groups to financial resources; and consolidating national and international cooperation on organized crime [9].

The National Strategy against Organized Crime 2021-2024 was developed following an analysis of the organized crime phenomenon and presents the main and specific objectives that must be achieved and assumed by the institutions responsible for preventing and combating organized crime. The proposed timeframe for this strategy is 2021-2024. The vision defining this strategy for combating organized crime is to develop and guarantee citizens' safety, support a socially and economically developed environment under legal conditions, through the prevention and combat of organized crime [9, p.2].

3. International strategies for the prevention and combating of organized crime. Within the framework of Pillar III concerning Cooperation in the field of Justice and Home Affairs (JHA) of the Maastricht Treaty, a proposal is presented to offer citizens a high level of protection in a space of freedom, security, and justice through judicial cooperation in criminal matters. Meanwhile, the Treaty of Lisbon authorizes European institutions to adopt minimum standards in criminal law regarding the definitions of crimes and sanctions when European Union rules are not effectively enforced, as well as to introduce common regulations concerning the conduct of criminal proceedings [8, p.13].

The harmonization of national legislations of EU member states regarding the criminalization of participation in the establishment of criminal groups, the evidentiary procedures for proving crimes committed by criminal organizations, and the extended confiscation of criminal proceeds represents one of the main objectives of the European Union's strategy for the prevention and combating of organized crime.

At the European level, several institutional forms are responsible for the prevention and combating of organized crime. The primary objective of all these forms of criminal cooperation is to maintain an environment characterized by freedom, safety and security.

On December 1st, in Rome, following a European Council meeting, the Trevi Group was established initially composed of ministerial representatives from EU member states. The main role of this group was to find ways to cooperate in combating terrorism. Later, two additional groups emerged, Trevi II and Trevi III, which developed strategies aimed at combating illegal immigration, maintaining public order, and fighting organized crime.

The Schengen Agreement represented another significant European initiative in the strategy to combat organized crime. It was signed on June 14, 1985. The legal foundation of the European Union was further strengthened by the adoption of the Maastricht Treaty, signed on February 7, 1992, which established the EU on the basis of three pillars: Pillar I – European Communities, Pillar II – Common Foreign and Security Policy (CFSP), and Pillar III – cooperation in the field of Justice and Home Affairs (JHA).

The European Union's Police Office, known as Europol, is one of the most significant outcomes of the policy of cooperation in justice and home affairs (JHA). Europol aims to manage information in the field of international crime and enhance cooperation at the European level in combating organized crime.

III. Individualization of penalties in combating organized crime. The individualiza-

tion of penalties is carried out within the limits established by the provisions found in the general and special parts of the Criminal Code, as well as in special laws where offenses are incriminated as crimes. Each crime has sentencing limits that account for its typical scenario, where the act committed has been consummated and no mitigating or aggravating circumstances have intervened. In judicial practice, such typical cases are quite rare, as the concrete circumstances of committing the act vary significantly [10, p.549].

In the process of individualizing penalties, the legislator has provided, in both parts of the Criminal Code and in special laws with criminal provisions, certain causes for mitigating and aggravating criminal liability [12, p.240].

Mitigating or aggravating circumstances are those states, circumstances, or qualities related to the crime or the offender that precede, accompany, or follow the criminal activity. These are expressly or implicitly regulated by criminal law and serve to either reduce or increase the severity of the offense or the dangerousness of the perpetrator, consequently mitigating or aggravating criminal liability [11, p.430].

Legal individualization represents an adaptation of criminal sanctions in relation to three key elements: the act, the perpetrator and modifying circumstances [12, p.240].

IV. The importance of special penalty mitigation circumstances in preventing and combating crime in Romania. Special circumstances for penalty mitigation in Romanian criminal law play a crucial role in preventing and combating organized crime through several aspects: firstly, by encouraging offenders to provide significant information to the prosecution authorities during the criminal investigation phase regarding other individuals who have committed crimes by denouncing them; secondly, by ensuring the full recovery of the civil party's damages in cases of tax evasion offenses; and lastly, through the abbreviated procedure of admitting guilt provided for in Article 396, paragraph 10 of the Code of Criminal Procedure.

An analysis of all special circumstances for penalty mitigation in special laws of Romanian criminal law reveals the utility of the denunciation made by an offender seeking a penalty mitigation. Moreover, special penalty mitigation circumstances represent an improvement of the legislative provisions in the current criminal law aimed at implementing protective measures against drug-related offenses, tax evasion, and other significant phenomena defining organized crime in Romania.

1. Special circumstances for penalty mitigation in Romanian criminal law. Depending on their applicability, circumstances for penalty mitigation can be general (applicable to all crimes) or special (applicable only to certain offenses). General circumstances are found in the general part of the Criminal Code, whereas special circumstances are included in the special part of the Criminal Code or in special laws.

Special circumstances for penalty mitigation include: Article 15 of Law No. 143/2000 on the prevention and combating of illicit drug trafficking (an individual who has committed one of the offenses provided for in Articles 2-9 and, during the criminal investigation, denounces and facilitates the identification and prosecution of other persons involved in drug-related offenses benefits from a halving of the penalty limits provided by law); Article 19 of Law No. 682/2002 on witness protection (a person who is a witness and has committed an offense but, before or during the criminal investigation or trial, denounces and facilitates the identification and prosecution of other individuals who have committed similar offenses benefits from a halving of the penalty limits provided by law); Article 15 of Emergency Ordinance No. 78/2016 on the organization and functioning of

the Directorate for Investigating Organized Crime and Terrorism (an individual who has committed one of the offenses under this emergency ordinance within the jurisdiction of the Directorate for Investigating Organized Crime and Terrorism and, during the criminal investigation, denounces and facilitates the identification and prosecution of other participants in the crime benefits from a halving of the penalty limits provided by law); Article 19 of Emergency Ordinance No. 43/2002 on the National Anticorruption Directorate (a person who has committed one of the offenses within the jurisdiction of the National Anticorruption Directorate, as provided in this emergency ordinance, and, during the criminal investigation, denounces and facilitates the identification and prosecution of other individuals who have committed such offenses benefits from a halving of the penalty limits provided by law); Article 10 of Law No. 241/2005 on the prevention and combating of tax evasion (if, during the criminal investigation or trial, before the first court hearing, the defendant fully covers the civil party's claims, the penalty limits provided by law for the committed offense are reduced by half); Article 396, paragraph 10 of the Code of Criminal Procedure, which provides for a one-third reduction of the penalty limits in cases where the abbreviated procedure of admitting guilt is utilized [12, p.242].

2. Law No. 143/2000 on the prevention and combat of drug trafficking and illicit drug use – Article 15 – special circumstance of penalty mitigation. According to Article 15 of Law No. 143/2000, a person is not punished if, before the initiation of criminal prosecution, they report to the competent authorities their participation in an association or agreement for the commission of one of the offenses stipulated in Articles 2-10 of this law, thereby enabling the identification and prosecution of the other participants. Therefore, a person who, after committing one of the offenses provided for in Articles 2-10 of Law No. 143/2000 and after the initiation of criminal prosecution for that offense, reports and facilitates the identification and prosecution of other individuals involved in drug-related crimes does not benefit from the exemption from punishment under Article 15 of Law No. 143/2000. Instead, they benefit from the penalty mitigation provision stipulated in Article 16 of the same law [13]. Following the republication of the law, the provisions regarding exemption from punishment are now found in Article 14, while those concerning penalty mitigation are found in Article 15 [14, p.142].

Conclusions. At present, organized crime represents a dynamic global phenomenon that influences the penal policies of states. Criminal legislation, market economy conditions, and the geopolitical and geostrategic positioning of states are determining factors in shaping specialized criminal organizations that operate in an organized and strategic manner. In this context, European states have adapted their criminalization norms in a way that aligns with their individual legal frameworks to prevent and combat organized crime.

The diversification and expansion of organized crime in Romania occurred following the political regime change after 1989, compelling the Romanian state to establish a criminal policy aimed primarily at preventing and combating organized crime. Organized crime poses a threat to Romania's national security by affecting the economic and social environment. Consequently, the Romanian legislator has enacted multiple legal instruments with a significant role in preventing and combating organized crime.

Special penalty mitigation provisions are among the legal tools devised by the legislator within special laws, with the dual purpose of both mitigating penalties and combating crime at the state level.

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USE OF ARTIFICIAL INTELLIGENCE IN LAW ENFORCEMENT ACTIVITIES: LEGAL CHALLENGES AND ETHICAL ASPECTS

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Summary

Artificial intelligence (AI) is increasingly playing a significant role in law enforcement, particularly in big data analysis, facial recognition, predictive policing, and investigative automation. The use of AI algorithms enhances the efficiency of law enforcement agencies; however, it also raises serious legal and ethical concerns.

This paper analyzes the current state of legal regulation regarding AI implementation in law enforcement, identifying key threats such as the lack of comprehensive legislation, algorithm transparency issues, risks of human rights violations, algorithmic bias, and the issue of accountability for AI-based decisions.

The study examines international regulatory practices, particularly in the European Union, the United States, China, and the United Kingdom, where legislative initiatives classify AI risks, establish audit mechanisms for algorithms, and regulate access to personal data. Special attention is given to the European Artificial Intelligence Act (AI Act) and the Council of Europe's Ethical Charter on AI in the judicial system.

The research also explores the compliance of AI applications with international human rights standards, including the European Convention on Human Rights and the EU General Data Protection Regulation (GDPR). It is argued that AI use in criminal proceedings must be based on principles of transparency, accountability, and human oversight.

In conclusion, the study proposes key directions for improving AI regulation in Ukraine, including the development of specialized legislation defining the admissibility of digital evidence, accountability criteria for AI-based errors, and mechanisms for controlling its use in law enforcement.

Keywords: artificial intelligence, law enforcement, legal regulation, ethical challenges, digital evidence, international experience.

Introduction. The rapid development of artificial intelligence (AI) is fundamentally transforming modern approaches to law enforcement. The use of AI in the field of criminal justice contributes to more efficient analysis of large datasets, crime prediction, automation of investigations, and strengthening of preventive measures. Facial recognition systems, crime prediction algorithms (Predictive Policing), chatbots for interaction with citizens, and digital evidence analysis are all real technologies already being applied in various countries.

However, the widespread implementation of AI in law enforcement raises new legal and ethical challenges. The lack of proper legal regulation, the issue of algorithmic transparency and responsibility for AI-driven decisions provoke serious discussions at the international level. The European Union is actively working on adopting the European Artificial Intelligence Act, while leading international organizations (UN, Interpol) are developing recommendations for the ethical use of AI in law enforcement.

Given the above, the study of legal challenges and ethical aspects of AI use in law enforcement is extremely relevant. It is important to assess whether the existing legisla-

tion provides adequate control over AI implementation and what potential risks may arise from its use in the field of criminal justice.

The purpose of this study is to analyze the current state of regulatory frameworks for AI application in law enforcement, identify key legal issues, assess ethical risks, and develop proposals for improving legal mechanisms for AI oversight in this area.

The object of the study is the legal relations arising in the process of implementing and using artificial intelligence in law enforcement.

The subject of the study is the legal and ethical challenges associated with AI use in law enforcement agencies, regulatory mechanisms, and international experience in this field.

Artificial intelligence (AI) is a complex system of software and hardware capable of learning, analyzing information, and making decisions without direct human intervention. In law enforcement, AI is used to process large datasets (Big Data), recognize faces, predict crime, automate investigations, and perform many other tasks.

Law enforcement agencies primarily use narrow AI (Weak AI) – specialized algorithms that perform specific tasks (such as video surveillance analysis) – which helps automate processes and enhance crime-fighting efficiency.

Law enforcement agencies process enormous amounts of data daily, including surveillance footage, social media posts, bank transactions, phone calls, and internet traffic.

AI enables:

– Detection of criminal schemes and financial fraud (e.g., money laundering and terrorism financing detection algorithms);

– Analysis of suspect behavior (gathering intelligence from open sources for investigations);

– Identification of connections between criminals (e.g., through call and bank transaction analysis).

For example, the FBI uses AI to analyze international drug trafficking data, enabling rapid identification of key figures in investigations.

Predictive Policing is an algorithmic analysis of historical crime data to anticipate future offenses.

AI examines past crimes, identifies patterns, and determines “hot spots” with high crime probabilities. Law enforcement agencies can then deploy additional patrols to these areas. For instance, the Los Angeles Police Department employs the PredPol system, which predicts potential crime locations based on previous offenses.

Despite its benefits, AI implementation in law enforcement presents serious legal and ethical challenges, including:

– Lack of comprehensive legal regulation;

– Potential violations of human rights;

– Unclear accountability for AI decisions;

– The need for transparency and algorithmic oversight.

Currently, Ukraine lacks specific legislation regulating AI use in law enforcement. Existing laws (the Constitution of Ukraine, the Criminal Procedure Code, the Law “On Personal Data Protection”) do not contain clear provisions on AI-based criminal justice applications.

This results in legal gaps, including:

– The absence of clear procedures for AI-based evidence;

– Undefined accountability for AI decision-making errors;
– Lack of transparency in machine learning algorithms used for crime analysis.

Meanwhile, the European Union is actively developing the "AI Act", which proposes:
– Classification of AI systems by risk levels (from low to unacceptable);
– Prohibition of certain AI applications (e.g., mass biometric surveillance);
– Establishment of mechanisms for AI algorithm audits.

For example, Germany has introduced legal norms requiring AI transparency in judicial processes, mandating disclosure of algorithmic logic.

AI is increasingly being integrated into law enforcement worldwide. However, its use raises serious legal and ethical challenges, including privacy concerns, algorithmic bias, and the issue of responsibility for AI-driven decisions.

Internationally, efforts to regulate AI in law enforcement are advancing, as seen in:
– European Union: The proposed "AI Act" classifies AI systems by risk levels and establishes compliance requirements;
– Council of Europe: The Ethical Charter on AI in judicial systems outlines principles for AI use in justice.

However, Ukraine is at an early stage of AI adoption in law enforcement, with no dedicated legislation governing its use. This creates legal uncertainties regarding the legitimacy of such technologies.

To ensure AI use in law enforcement aligns with human rights, it is crucial to:
– Develop clear standards for AI-based evidence in legal proceedings;
– Define responsibility for AI decision-making errors;
– Ensure transparency and oversight of AI algorithms.

In conclusion, while AI can significantly enhance law enforcement efficiency, it must be strictly regulated to safeguard human rights and prevent potential misuse.

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EUROPEAN INTELLIGENCE COOPERATION ON COMBATING SECURITY THREATS

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Summary

This paper aims to analyze the main issues concerning the evolution of the intelligence field at the level of the European Union and the formation of the current concept of security architecture, to maintain the security of space through the element of cooperation at its foundation. The current context is giving rise to new prospects for making national and European institutions in this field more effective, with a view to maintaining security by combating risks and threats.

While traditional security challenges remain important, the most serious threats to international security increasingly stem from transnational phenomena. Transnational terrorism, transnational criminal networks, nuclear proliferation, the development of harmful bio-pathogens, the continuing illegal trade in conventional weapons – all these threats have one thing in common beyond their destructiveness: they are transnational. As such, they are extremely difficult to combat or counter through individual state action. But a European policy should be the answer to combating them. The relevant decisions to be taken by the EU in the areas of foreign, security and defense policy must be safeguarded by reliable situation assessments created based on intelligence gathered.

We will also consider intelligence barriers as a clear indication of the need to improve information sharing and intelligence coordination at European level. A security debate is therefore needed on the future of cooperation solutions between EU Member States and deeper integration.

Keywords: intelligence, European security, interinstitutional cooperation, transnational threats, European foreign, security and defense policy, intelligence barriers.

Introduction. National security and national defense are a duty of the government of each state and involve ensuring a climate of stability for the economy, citizens and state institutions. While not so long ago this concept referred strictly to the military and military attacks on states, nowadays this notion includes in its spectrum of operationalization several elements that do not strictly concern military factors. Thus, when we talk about security, we are talking about combating terrorism, organized crime, maintaining economic security, energy security, environmental security, food security, cyber security and so on. Also, as the entire literature points out, national security risks include, in addition to the actions of other states, the actions of non-state actors, such as terrorist factions or organized criminal groups.

We will avoid reviewing the different ways of defining the concept of security precisely because their diversity is an argument for the complexity of the concept. Moreover, the vision of what it means to ensure national security has over time been shaped by the need of political leaders to justify certain public actions and attitudes. In this respect, we

believe that the definition of the concept has been under the 'auspices of the times', so that its complexity has served as an advantage to those who have been interested in giving it new and new meanings. However, in order to obtain a result that is as close to the truth as possible and in line with current reality, a definition of national security would be useful to refer to the following key elements specific to a framework of analysis, without claiming to compare it with the multi-sectoral approach to security proposed by the representatives of the Copenhagen School [1]: the primacy of national values in integration and development relations; the complex nature of security dimensions; the existence of reference objects and the impact of risks and threats on them; protection/protection, seen as the ability to prevent or delay the materialization of an undesirable event; resilience, seen as the ability to resume normal activity after an undesirable event; deterrence, in the sense of stopping a state/national actor from taking an action that could affect societal or individual well-being. The defining criteria and indicators are relative, requiring multiple options for explanation.

Any theoretical approach is put into practice through national security policies and national security strategies of states [4], i.e. those documents based on which states act to maintain a stable security environment primarily at the domestic level, but also in agreement with the international communities of which they are part. The security outlook of states therefore varies from one state to another, as security priorities depend on each state's security strategy, the security and defense resources allocated and the main threats to stability. Some states configure their military forces with the aim of maintaining and defending territorial integrity, while others invest in higher-cost expeditionary capabilities to project power by supporting military operations abroad. Some states may resort to hard power instruments, while others to soft power instruments such as diplomatic and foreign policy instruments [18].

To sum up, the "auspices of the times" call for a new security paradigm – as a model/school of thought and practice subject to constant refinement, centered on a good knowledge of the levels of analysis and state/non-state actors under consideration, and, therefore, this will influence the way states relate to intelligence work. As a principle, you cannot understand the usefulness, effectiveness and ways of using intelligence if you do not properly understand the national and international social, political and security environment [2]. And this is because intelligence, understood as an activity [11], fulfills four major tasks: to detect and prevent possible strategic surprises that would jeopardize national existence; to provide long-term expertise (a stable analytical framework on national security issues); to support governance, the political process, decision makers; and to preserve the confidentiality of information, information needs and methods used in intelligence work. The logic is simple: changing the security paradigm implies changing the intelligence paradigm.

Call for inter-institutional intelligence cooperation. In an ideal world, all states would cooperate to face these common threats. Cooperation would take many forms, depending on the specific circumstances and the nature of the threat, but the need to share large volumes of information and knowledge would be a common thread running through these efforts.

In the real world, the impediments to sharing at this scale are significant because the knowledge and information in question falls into two broad categories. The first category refers to data and information that governments and other actors have a practical

interest in sharing voluntarily, although they may not recognize this. A second category is information and knowledge that governments wish to keep classified. Institutions would find it difficult to handle both types, because their organizational traditions and cultures emphasize secrecy, not knowledge sharing.

The world and related threats are becoming increasingly diffuse in their nature and manifestation, and globalization has facilitated their expansion and development, leading to a growing sense of insecurity for nation states. At the same time, global trends, such as population explosion, uneven economic growth, urbanization, pandemics, biotechnological developments and ecological trends, are generating new drivers of international instability [14]. These trends lead to the development of a clear set of priorities for intelligence collection and analysis that are extremely challenging for the international environment [10]. In this sense, the process of globalization, together with the information revolution, has brought about a large-scale change in intelligence domain. First, intelligence services are forced to discern emerging aspects of a series of events, which are often connected and lead to a common goal. Secondly, they need to understand global dynamics better than ever before, as intelligence organization and collection adapt to the new security reality (the new domestic and international security environment), making the sharing of information and knowledge essential to the successful achievement of common intelligence objectives. Thirdly, intelligence services have focused much more on anticipating and preventing security threats and less on their ability to respond to events, which is, after all, the raison d'être of these institutions [17]. Taking a pro-active approach, they have realized that the damage and negative impact of threats are far too great to assume their materialization.

To better understand, on the one hand, the eventual materialization of a threat to national/international security and, on the other hand, the need for inter-institutional cooperation lets us make an exercise of imagination by considering some of the most important threats with the appearance of a phenomenon. First, the phenomenon of transnational organized crime, more so as members of highly sophisticated and organized criminal syndicates can pursue a complex network of lucrative legal and illegal actions on a global scale. Contemporary criminal organizations are adaptable, sophisticated, highly opportunistic and are involved in a full range of illegal practices such as trafficking in drugs, arms or people and corruption. Their members carry out illegal activities such as drug trafficking, prostitution, loansharking, illegal gambling as well as large-scale insurance fraud, depletion of natural resources, environmental crime, migrant smuggling, bank fraud, tax fraud and corruption. In addition, the frequent use of money earned from illegal projects to finance legitimate ones allows transnational criminals to launder money and make even bigger profits. Transnational criminal actors are not afraid to operate globally in any country where there are legal or bureaucratic loopholes. These environments allow them to take advantage of the system and context so that their activities are not hampered by a rigorous justice and security system. As with international corporations, transnational criminal organizations are willing to work together, often trading for the use of the unique talents of others to accomplish specific tasks or to make long-term arrangements when they suit their needs.

Then, nowadays, terrorism seems to have become a traditional threat, as such, and one of the main tasks of intelligence and security services. The incidence of international terrorist attacks has risen considerably, so that on average more than one terrorist attack

takes place every day worldwide. While new technologies and rapid changes in transportation and telecommunications offer new opportunities, they can also create new security threats. Some individuals design potentially devastating bombs or toxins using blueprints they find on the internet. Computer fraud, as well as illegal access to a computer system are some of the most common forms of crime that can pose real threats to the security of states. Today, crossing borders is no longer an impediment, as another country's data and information can be stolen silently online.

Another threatening trend is the widespread use of computer encryption. Some widely available encryption hardware and software systems allow criminals or terrorists to use hard to crack codes and access computer systems where they can find sensitive information.

The challenges have become and will continue to emerge in an increasingly complex way, and the need for intelligence services to cooperate and be more effective is becoming ever more pressing. Implicitly, all of this makes it more difficult to lead, organize and manage change in an intelligence service, driven to focus its attention and resources towards conflict resolution, countering threats, and maintaining and fostering cooperation with potential partners. It is not the place here to extend the analysis to the need to design an intelligence service to be reconfigurable from the outset, but for an intelligence service operating in a fiercely competitive market such as that for strategically valuable information, change must be aimed at increasing the ability to recognize and protect its own vital information, which is specific to organizations that have an appropriate intelligence culture adapted to the information society [9]. Some of the main elements of this culture relate to the understanding of the increased role and importance of obtaining and protecting information in postmodern society and, at the same time, the need to share information, inter-agency cooperation, with civil society, private and academic organizations, to overcome the challenges of knowledge complexity and global and unconventional threats.

Intelligence sharing in the European Union. If we define the concept of intelligence as simply as possible, we will find that it concerns the collection and analysis of information obtained from both open, publicly available and covert sources to reduce the uncertainty of decision-makers on a particular security policy issue [4]. Thus, intelligence takes raw information and analyzes it, putting it in the right context, to draw the necessary conclusions about other actors or states of the world, conclusions that could not be observed directly [6].

Intelligence sharing occurs when a state (sender) communicates an intelligence product it possesses to another state (receiver). Since the early 1990's, two major developments have led to an increased exchange of intelligence between EU Member States. First, the establishment of freedom of movement of people, goods, capital and services within the EU and the emergence of a common currency have substantially reduced national control over cross-border activities, which has naturally led to an increasing need for the exchange of intelligence on terrorism and other criminal activities [16]. At the same time, the development of a defense and security policy has led Member States to integrate part of their defense planning with intelligence on external developments.

From a practical perspective, the free movement of goods, capital and people within the EU poses several challenges for the internal security of Member States. It is easy to understand that in a borderless environment, organized crime groups can intensify their

activities undetected by law enforcement authorities. With the disappearance of internal borders in the EU, a good opportunity to detect trafficking in drugs, people or weapons of mass destruction is also removed. Also, the introduction of a single currency facilitates money laundering and the international transfer of illegally acquired funds, which can thus finance criminal or terrorist organizations [13, p. 121]. Finally, the free movement of persons allows potential terrorists to attack an EU Member State and take shelter in another Member State. Even terrorist organizations outside Europe can communicate and organize a possible attack on EU territory more easily [19].

The second major challenge for the Member States' intelligence community came against the background of the development of a common foreign and security policy. The first step in this direction was taken with a joint declaration in November 1998 by British Prime Minister Tony Blair and French President Jacques Chirac in Saint-Malo. On that occasion, the two European leaders agreed that "the Union must have the capacity to act autonomously, backed by a credible military force with the means to be deployed rapidly in response to international crises" [20]. The structural changes brought about by this declaration were significant. Therefore, certain structures were established at EU level to analyze the situations facing the Union and the intelligence sources available, as well as the capabilities needed for strategic planning [20, p. 631].

Intelligence exchange, however, always implies that there is trust between the actors who carry out such an exchange. In academic research, there are a variety of traditions derived from the field of socio-human sciences [5], which identify similar interests as an essential condition for an actor to trust the information communicated by another actor. Thus, when decision makers in a receiving state are convinced that the sender state has identical intentions, the former will know that the sender has an interest in honestly communicating the information it holds. Otherwise, even if the receiving state is convinced of the sender's ability to obtain the information communicated, if the two states do not share the same view on the subject matter in question, the recipient may choose to ignore that information.

Moreover, a sending state communicates intelligence with another state primarily on the basis that it trusts that the recipient will secure the information provided and act in accordance with its interests. Of course, trust is not the only barrier to intelligence sharing. For example, some states might be concerned about possible dependence on intelligence provided by another state, which would thereby gain some concessions in other areas [7].

Trust is crucial for both the sending and the receiving state. For the receiver, the importance of trust is given by the impossibility to independently verify the accuracy and trustworthiness of the information communicated. This creates the possibility for the sending state to transmit altered information to influence the policies of the receiving state in a direction that serves the interests of the sender and not those of the receiver.

In these circumstances, the question naturally arises: do EU Member States trust each other enough to exchange intelligence effectively? Some steps towards building trust have already been taken, both by setting up multilateral formats for cooperation between intelligence services of EU Member States and by setting up certain EU structures aimed precisely at fostering intelligence sharing, such as INTCEN and Europol. In practice, the constant strengthening of cooperation and bringing it to a supranational level has been the main instrument to increase trust between Member States, which might have had

some reservations in cooperating bilaterally without these European instruments.

Intelligence cooperation in the European Union. As mentioned earlier, intelligence cooperation is one of the most significant items on the agenda of states. Since the Cold War period, cooperation in intelligence structures has taken place between groups with different views in this area, but with the same goal, the protection of European territory [15]. We will focus on those that are more relevant, in our opinion, to the current scientific context.

The Club de Berne – is an information-sharing forum between the intelligence services of the Member States of the European Union, Norway and Switzerland, named after the city of Bern. It is an institution based on the voluntary exchange of secrets, experience and points of view, as well as the discussion of issues on common agendas. The Club was founded in 1971. It has no decision-making capacity and does not have its own secretariat.

The Counter-Terrorism Group (CTG) is a substructure of the Club and disseminates information on terrorist threats, as its name suggests. It provides threat assessments for EU decision-makers and offers a template for expert collaboration. The group was created after September 11, 2001, to further support intelligence cooperation between the intelligence structures of European states. CTG, like the Club, is not part of the institutions of the European Community, but cooperates with them through direct collaboration with the EU Intelligence Analysis Center (EU INTCEN), a subsidiary under the jurisdiction of the European External Action Service (EEAS). Although not part of the EU, its presidency overlaps with that of the EU Council Presidency and acts as a formal interface between the Club de Berne and the EU. Therefore, the Club de Berne does not base its activities on any EU normative act. Moreover, the members of the group do not expect all members to share relevant information with each other, i.e. the exchange of information is based on voluntary action by states and not on an actual working procedure.

European Union Situation and Information Center (EU INTCEN). The EU Intelligence and Situation Centre (EU INTCEN) is an intelligence structure within the European External Action Service (EEAS) of the European Union, under the authority of the EU High Representative. INTCEN's mission is to provide intelligence analysis, early warning and situational awareness to the EU High Representative and the European External Action Service, the various EU decision-making bodies in the areas of the Common Security and Defense Policy, counterterrorism, etc. EU INTCEN does this by monitoring and assessing international events, focusing on sensitive geographical areas, terrorism and the proliferation of weapons of mass destruction and other global threats.

Europol. The European Union Agency for Law Enforcement Cooperation, better known as Europol, was set up in 1998 to manage intelligence in the fight against organized crime and terrorism through cooperation between the competent authorities of the EU Member States. The Agency has no executive powers, and its officials have no right to arrest suspects or act without the prior approval of the competent authorities of the Member States.

As far as Europol's designated tasks are concerned, the Agency's agenda is to assist EU Member States in the fight against international crime, such as drug trafficking, trafficking in human beings, intellectual property crime, cybercrime, trafficking in counterfeit euro-zone products and combating terrorism, serving as a center for cooperation and law enforcement, providing expertise and intelligence products on matters of interest. Europol and its officials have no executive powers, therefore no powers of arrest and

cannot conduct investigations without the approval of national authorities.

Some intelligence barriers – obstacles to cooperation, information exchange and coordination of information at European level. Even if in this sensitive area, like that of intelligence, we can talk about reluctance and failure to cooperate, however, it is necessary to identify as many solutions as possible in support of boosting cooperation. It should not be lost sight of the fact that in the period post September 11, previously impossible alliances then became viable, mainly due to the common purpose of combating terrorist threats. It is also clear that no service has the financial, human or technical resources to be completely independent across the spectrum of activities in which it is mandated to act [3, p. 102].

Beyond the disparities in the political, administrative and judicial framework of the EU Member States, or the bureaucratic interests and related organizational culture that could prevent the effective exchange and coordination of information, we summarize the types of obstacles on the way to deepening the cooperation in the field of intelligence, stated in the Romanian literature [3, pp. 98-99]:

Those related to information security and risks to sources – even within a bilateral relationship there are risks of information manipulation due to lack of procedures, unauthorized use in relations with third parties, public leakage, etc.

The national and sovereign nature of security activities – there are some representative voices for the Union institutions that have expressed their dissatisfaction or concern about the reluctance of the Member States to provide sensitive/intelligence data to the competent EU structures.

Fear of jeopardizing some privileged relations, for example in the case of NATO/EU states that have some bilateral agreements on the exchange of information with the US.

Professional "vanity" to consider that the analysis of any homologous organization cannot be as accurate or reliable as its own.

The tendency to view international relations as a zero-sum game makes them reluctant to adopt a cooperative approach to security or an integrated defense.

By far the list of barriers or obstacles in intelligence cooperation is not closed. Changing perception in this area could lead to filling in identified gaps, reducing operational costs and replacing non-existent diplomatic relations, more so as "the transnational nature of security threats makes isolation an impossible option" [8, p. 536].

Conclusions. As we have found, intelligence agencies choose either to cooperate or not, for several reasons. The key is that no agency can do and know everything.

Threats to international security will continue to exist and affect all member states of the European Union, although not to the same extent. A common European security policy should be the answer in combatting them. Relevant decisions to be taken by the EU in the areas of foreign, security and defense policy must be protected by reliable situation assessments created on the basis of the information collected.

With the establishment of the foundations of the already existing institutions that have responsibilities in the field of maintaining national security of the member states, the EU has been given a stronger role in analyzing threats to internal and external security. Thus, the EU currently has integrated information cooperation structures. Even though national authorities seem to be much less dependent on EU structures than vice versa, it should be noted that these structures and their products benefit both the EU and its member states.

EU-level intelligence activities are also considered and accepted only as complementary actions to national security measures, without replacing them. Terrorist attacks on EU territory so often, on the one hand, and the resulting political calls, on the other, are a clear indication that there is a need to improve information sharing and coordination at European level. Thus, a security debate is needed on the future of cooperation solutions between EU member states, as well as deeper integration.

Greater cooperation in the field of information would bring professional, financial and political advantages, allowing the EU to build a more effective security and defense policy and be a more effective actor in the global political arena.

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THE EUROPEAN COMMISSION AND THE ROLE OF EUROPEAN PROJECTS IN THE DEVELOPMENT OF THE GENERAL POLICE INSPECTORATE IN THE FIELD OF PREVENTING AND COMBATING CRIME

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Summary

This article analyzes the impact of European projects on strengthening the capacities of the General Police Inspectorate (GPI) of the Ministry of Internal Affairs (MIA) in preventing and combating crime. In the context of the country's European integration path, cooperation with the European Union and the support of the European Commission have been and continue to be essential for the modernization of law enforcement institutions.

Through various funding programs, such as TAIEX, Horizon Europe, the Internal Security Fund (ISF), Digital Europe, and the Service for Foreign Policy Instruments (FPI), Republic of Moldova has benefited and continues to benefit from resources for justice reform, public security, digitalization, and the fight against cross-border crime.

The analysis highlights the main challenges faced by authorities, including the rise of organized crime as a consequence of the war in Ukraine and threats associated with hybrid warfare, such as cyberattacks and disinformation. The study employs both qualitative and quantitative methods, including the analysis of project documents, progress reports, and statistical data on the efficiency of beneficiary institutions.

Keywords: crime, prevention, combating, European projects, financing, international cooperation, etc.

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Introduction. Preventing and combating crime is a key global priority with a direct impact on national and international security and stability. Organized crime, corruption, drug trafficking, human trafficking, and other forms of transnational crime can destabilize economies, undermine public trust in state institutions, and jeopardize the sustainable development of societies.

In this context, international cooperation is indispensable, as cross-border crime challenges cannot be effectively addressed by individual states alone. The European Union, as a global actor, plays a fundamental role in coordinating and implementing policies and projects that support national authorities in the fight against crime by promoting information exchange, training, and technical assistance.

In the Republic of Moldova, combating crime and promoting fair justice are key

strategic objectives, given the complex geopolitical context and the challenges the country faces. During its European integration process, Moldova benefits from the European Union's support through various projects aimed at strengthening law enforcement institutions, tackling corruption, and increasing efficiency in managing organized crime cases.

Alignment with international and European standards in this field is essential for reinforcing the rule of law and protecting citizens' fundamental rights. The adoption of Decision No. 948 of December 28, 2022, which approves the Program for Preventing and Combating Crime for 2022–2025, reflects the national authorities' commitment to implementing effective measures to enhance public security. This program serves as a vital framework for international cooperation and for attracting external funding to support the modernization and reform of public institutions, which are essential for crime prevention.

Additionally, the National Security Strategy of the Republic of Moldova, adopted by Parliament on December 15, 2023, is a medium-term strategic planning document that outlines the country's approach to ensuring national security and protecting its interests. It serves as a guiding pillar for national security policy, providing a coherent and strategic framework for policymakers and government agencies within the defense and security sectors.

Chapter 24 of the *National Program for the Accession of the Republic of Moldova to the European Union* focuses on the development and consolidation of key institutions in the fields of justice, freedom, and security, playing a fundamental role in Moldova's European integration process [14]. This chapter reflects the country's commitment to implementing the European Union's standards on the rule of law, the protection of citizens' fundamental rights, and the fight against crime, including cross-border crime. As part of this process, national legislation and legal practices are being aligned with the European Union acquis, thereby creating an efficient and independent justice system capable of ensuring citizens' freedom and security.

In the context of Moldova's European integration path, strengthening the institutional capacities of central public authorities remains a major strategic objective. The European Union, through the European Commission, supports institutional development via projects focused on justice reform, public security, and crime prevention. In this regard, European projects play a crucial role in enhancing the administrative and operational capacities of institutions responsible for maintaining public order, contributing to Moldova's integration into international security structures and facilitating the adaptation of national legislation and practices to European standards.

This article examines the impact of European projects on the capacities of public authorities in Moldova in the field of crime prevention and law enforcement. It highlights best practices that have been implemented while also addressing the challenges that persist. Additionally, it explores the role of the European Commission in supporting this transformation, ensuring that national authorities have access to the necessary resources to develop effective public policies and improve efficiency in combating transnational crime.

Methods and materials applied. The study employs a combination of qualitative and quantitative methods, including the analysis of relevant project documents, progress reports, and mid-term evaluations, as well as reports from representatives of central public authorities, public security experts, and European project managers. Additionally, the research is based on the analysis of statistical data concerning crime rate trends and the performance of beneficiary institutions involved in European projects, utilizing relevant

efficiency and impact indicators. This data is compared to assess the effectiveness of crime prevention and combating measures and to identify any gaps or challenges encountered during the institutional reform process.

Discussions and results obtained. According to reports and statistics published by the Ministry of Internal Affairs and the General Police Inspectorate, organized crime remains a significant challenge in the Republic of Moldova. Between 2023 and 2024, there were notable increases in areas such as drug trafficking, human trafficking, and cross-border crime, prompting authorities to implement more effective countermeasures.

A key factor contributing to this rise is the war in Ukraine, which has generated regional instability and provided opportunities for organized crime networks. The conflict has led to an increase in smuggling activities, including arms and drug trafficking, while also facilitating the expansion of criminal networks in the region. Additionally, massive refugee flows have been exploited by human trafficking groups, resulting in a rise in reported cases in this area.

Drug trafficking continues to be a major issue, and combating it is closely linked to enhancing cooperation between national and international authorities. In this regard, Moldova has strengthened its partnerships with European agencies and international organizations to combat cross-border crime and prevent the spread of criminal networks.

The threats posed by hybrid warfare have become increasingly evident, directly impacting national security and shaping how authorities must respond to emerging challenges. Cyberattacks, propaganda, disinformation, and the use of criminal networks to destabilize the state are just some of the tactics employed in this type of conflict. To address these risks, investments in cybersecurity and the strengthening of hybrid threat analysis and prevention capacities are essential for protecting critical infrastructure and maintaining public order.

Since signing the Association Agreement in 2014, the Republic of Moldova has made significant strides in harmonizing its legislation with EU standards and in reforming its security sector. Notable progress has been achieved in several security-related areas. The EU has provided substantial support to the Ministry of Internal Affairs and its subdivisions, enabling the country to fulfill commitments related to public order, the rule of law, the fight against corruption, and organized crime. This assistance has facilitated the implementation of actions in the accession process, putting Moldova ahead in these areas compared to others. Even before the war in Ukraine, the EU's support for the Ministry of Internal Affairs was instrumental in developing a genuine rule of law, equipping law enforcement bodies with the necessary capabilities to maintain public order, ensure border security, and respond to exceptional situations.

Regarding the defense sector, initial cooperation between the European Union and Moldova was modest, but security and defense collaboration has significantly increased since 2023.

The reform process faces significant domestic budgetary and political constraints, indicating limited institutional capacity to develop a proactive approach to national security and defense challenges. At the same time, the reliance on external support underscores a reduced level of autonomy within the security sector [10].

In 2024, the Republic of Moldova made substantial progress in strengthening the legal and institutional framework for preventing and combating organized crime. On November 27, 2024, the Government approved a draft law amending Law No. 50/2012 on the

prevention and combat of organized crime, aiming to enhance citizen security and public order. The amendments introduce measures to prevent and address organized crime, thereby contributing to the protection of public order, state security, and the safeguarding of the rights and legitimate interests of individuals, society, and the state.

These amendments, drafted by the Ministry of Internal Affairs, were submitted to Parliament for examination and adoption. On January 30, 2025, Parliament passed the amendments in their final reading, establishing more effective mechanisms in the fight against organized crime.

To align with European Union standards, Moldova reaffirmed its commitment to implementing effective measures to combat crime, including cross-border crime, by harmonizing national legislation with the ”acquis communautaire”.

In this context, the European Commission supported projects play a key role in preventing and combating organized crime. By funding initiatives in public security, judicial cooperation, and institutional capacity building, the European Union strengthens Moldova’s efforts to counter cross-border threats. Programs focused on modernizing law enforcement structures, specialized staff training, and developing effective mechanisms for information exchange between European states enable faster and more efficient responses to criminal networks.

Law enforcement institutions are central to preventing and combating organized crime. In this regard, the Republic of Moldova benefits from significant support through European-funded projects that enhance the development of public authorities. Programs such as TAIEX [6], Horizon Europe [7], Internal Security Fund, Digital and Foreign Policy Instruments, funded by the European Commission, contribute greatly to institutional reforms and to strengthening national authorities’ capacities in the fight against crime [14].

A major priority in institutional development is identifying and accessing external sources of funding. These funds can be obtained by participating in non-reimbursable external assistance projects or by applying for non-reimbursable grants. A key aspect of this process is utilizing partnership instruments to facilitate cooperation with third countries in implementing external assistance projects, often through the formation of consortia with European Union Member States, which typically assume the role of project leaders.

The European Union’s external assistance platforms are designed to achieve the objectives outlined in EU directives and to address EU challenges through a transnational approach. These projects serve the interests of both the EU community and neighboring states, aiming to establish a framework for cooperation between EU Member States and neighboring countries to collectively address common challenges. Consequently, projects carried out on these platforms contribute to strengthening solidarity and cohesion within the European region while promoting values such as sustainability, inclusion, and collective progress.

For each reference period, in order to identify eligible project calls for Moldova as a non-EU state, the European Commission’s official portal “Funds and Tenders” is consulted. This portal publishes calls for projects under programs that align with the interests of the Police, such as “HORIZON 2021-2027”, “ISF”, and “DIGITAL”.

In 2024, the General Police Inspectorate (GPI) submitted applications for over 30 projects and programs funded by the European Commission [8]. The objective of these applications is to strengthen operational capacities, modernize infrastructure, and develop human resources. These initiatives target key areas such as public security, the fight

against organized crime, energy efficiency, digitalization, and the protection of public spaces. Through these projects, the GPI aims to adopt best European practices in preventing and combating crime, thereby enhancing citizen safety. The projects will be evaluated in April 2024, and their implementation is expected to significantly improve police operations in the Republic of Moldova.

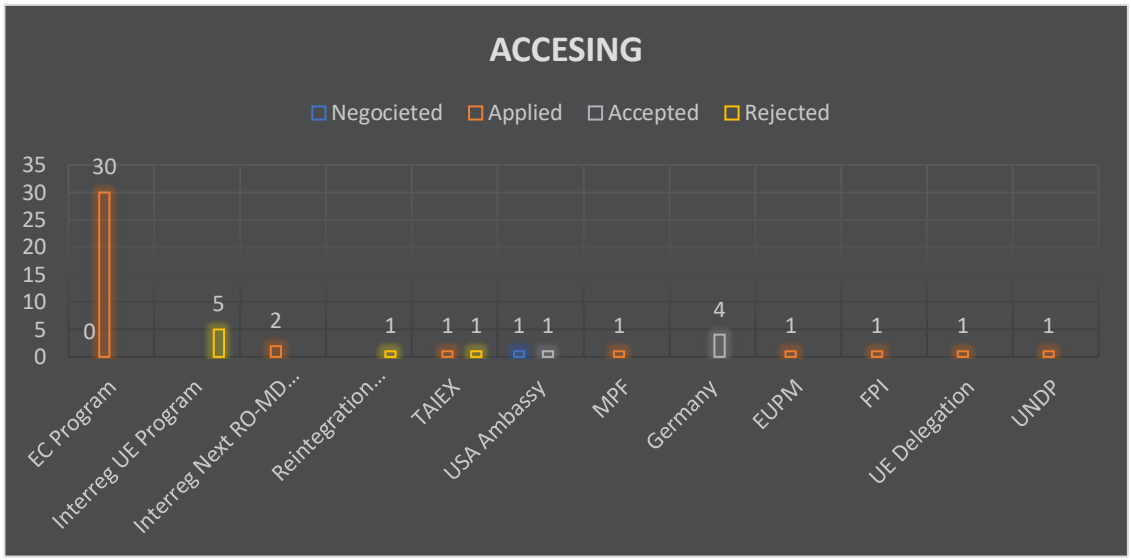

Image No. 1
Internal analysis of the Project Management Department of the GPI
Source: Developed by the author based on data from the Project Management Department of the GPI for 2024 [14].

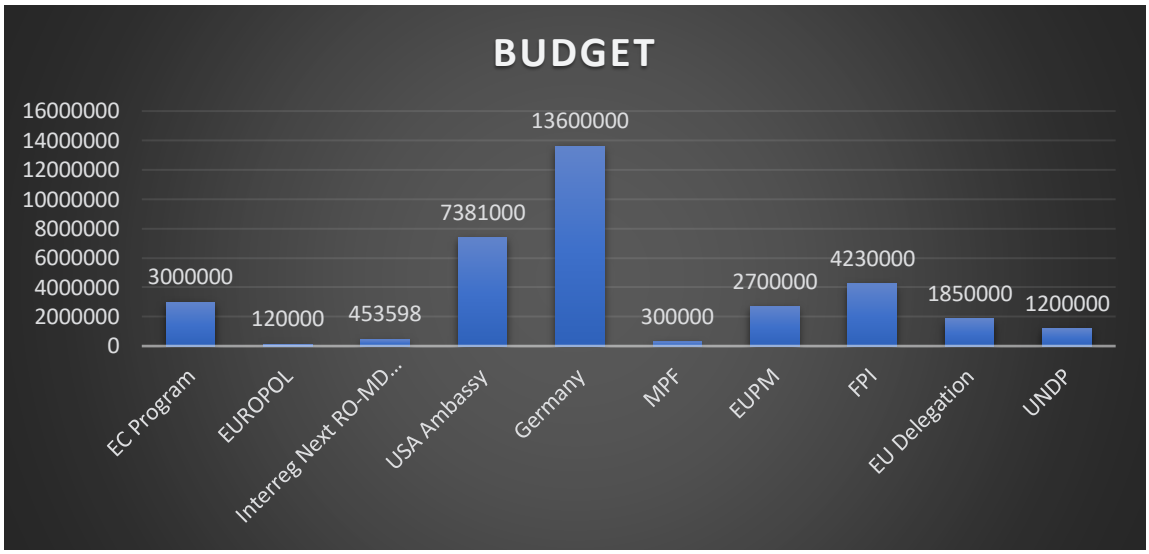

Image No. 2
Internal analysis of the Project Management Department of the GPI
Source: Developed by the author based on data from the Project Management Department of the GPI for 2024 [14].

In addition to the projects for which the GPI applied in 2024, the institution continues to implement initiatives already underway, aimed at improving public security,

strengthening operational capacities and facilitating international cooperation.

The General Police Inspectorate is currently implementing over 50 projects aimed at strengthening institutional capacities, modernizing infrastructure and improving crime investigation and prevention tools (Images No.3, No.4). These initiatives aim not only at combating organized crime, but also at developing effective mechanisms for international cooperation, integrating modern technologies and increasing the level of training of law enforcement agencies.

The European funds allocated through the mentioned programs play a key role in this fight, providing financial resources, technical support and expertise for the development of solid operational capabilities. The fight against organized crime is not only about reactive measures, but also involves a proactive approach, based on prevention, information exchange and the use of advanced technological solutions.

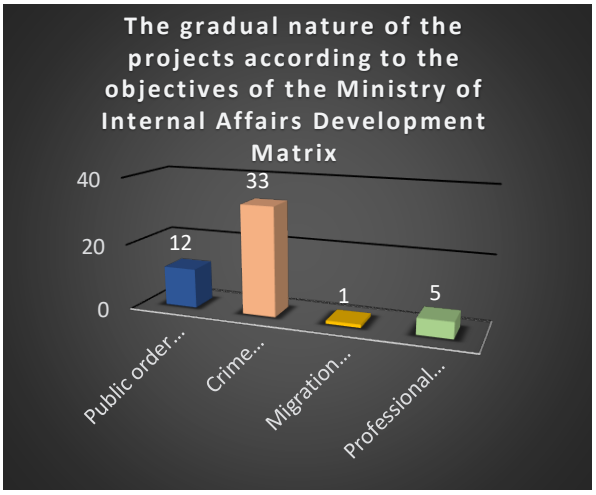

Image No. 3

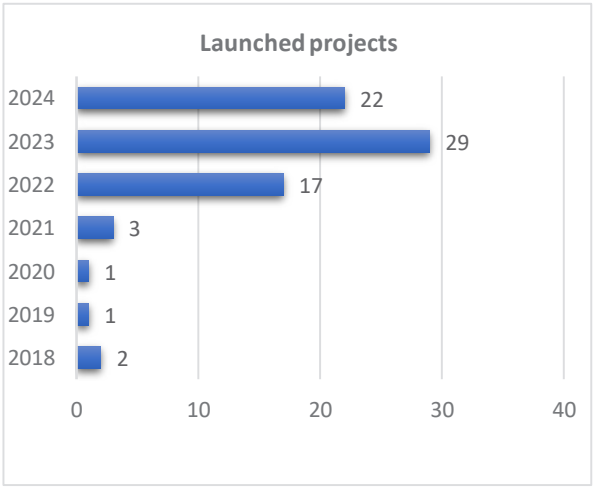

Image No.4

Internal analysis of the Project Management Department of the GPI
Source: Developed by the author based on data from the Project Management Department of the GPI for 2024 [14].

Through the TAIEX and Horizon Europe programs, the General Police Inspectorate has successfully developed solutions for managing serious crimes, benefiting from modern technologies for investigating and analyzing data, as well as enhancing rapid intervention capabilities. Additionally, projects funded by the Internal Security Fund have contributed to strengthening information exchange networks and operational cooperation between national authorities and international law enforcement institutions.

A concrete example of the impact of these initiatives is the training of police officers in combating human trafficking and arms trafficking, conducted within European Commission projects and programs. Moreover, the use of technological solutions for monitoring and intercepting criminal networks has significantly increased the Police's efficiency in preventing and dismantling criminal groups.

Furthermore, the implementation of anti-drug trafficking projects has led to a substantial increase in the number of seizures. In 2024, the General Police Inspectorate reported improved results in this area, thanks to a modernized monitoring system and more effective cooperation with international agencies. Horizon Europe projects have provided

innovative solutions for identifying and preventing drug-related criminal activities, thus supporting the authorities' efforts in this regard.

In this context, the Police of the Republic of Moldova, with support from the European Commission, has invested in the development of IT infrastructure and the implementation of advanced data analysis tools, which are crucial in identifying and tracking organized crime networks. The modernization of technological capacities has not only increased institutional efficiency but has also allowed for a more proactive approach to combating serious crime, while facilitating international collaboration.

Thus, by implementing European projects, the Republic of Moldova is making significant progress in strengthening law enforcement structures. These projects aim to modernize institutional infrastructure, improve security personnel, and develop effective mechanisms to prevent and combat organized crime.

Through sustained investments in advanced technologies, such as data analytics systems and digital monitoring, Moldovan authorities are enhancing their ability to detect and neutralize criminal networks, helping to reduce illegal activities such as drug trafficking, human trafficking, and cybercrime. Cooperation with European agencies, such as Europol and Frontex, facilitates information exchange and supports the implementation of effective strategies to combat cross-border crime.

The results of these initiatives are visible through increased operational efficiency of law enforcement agencies, improved inter-institutional coordination, and progressive alignment with European Union standards in security and justice. These efforts not only strengthen Moldova's resilience to criminal threats but also contribute to regional security, ensuring a more stable and secure public order for citizens.

These advancements demonstrate the Moldovan authorities' firm commitment to combating crime and adopting modern solutions to ensure national security, reflecting the positive impact of strategic investments on reducing criminal phenomena.

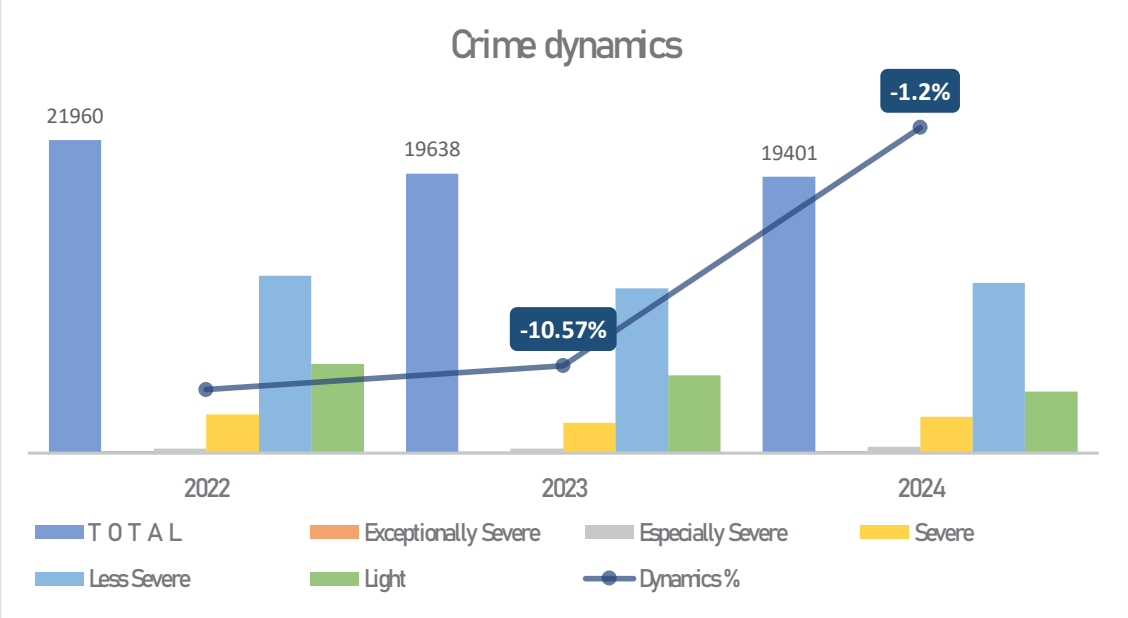

Image No. 5
Internal analysis of the Project Management Department of the GPI
Source: Developed by the author based on data from the Project Management Department of the GPI for 2024.

Conclusions. In conclusion, European funds are an essential tool in combating organized crime in the Republic of Moldova, supporting the Police in implementing advanced solutions for the prevention and deterrence of serious crimes. Through the implementation of these projects, the Moldovan authorities have been able to improve institutional infrastructure, adopt modern technologies, and develop international partnerships that are crucial for combating cross-border crime and other forms of organized crime.

The impact of these projects is evident in the increased capacity of institutions and personnel to respond to challenges and threats in the field of public security, significantly contributing to the strengthening of the rule of law and the protection of citizens' security in the Republic of Moldova.

European projects have a significant impact on developing the capacities of central public authorities in preventing and combating crime. However, the sustainability of these reforms depends on political commitment, the allocation of domestic resources, and the strengthening of international partnerships. Continued cooperation with the European Union presents a key opportunity to enhance institutional efficiency in this area.

Overall, these European projects have a significant impact on the capacity of central public authorities in the Republic of Moldova, providing essential support in institutional reforms, infrastructure modernization, and the implementation of effective measures to prevent and combat crime. The General Police Inspectorate plays an active role in their implementation, benefiting from resources and expertise to contribute to increasing public security and integrating the Republic of Moldova into international security frameworks.

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CZU: 343.3

PREVENTING THE COMMISSION OF PUBLIC OFFICE OFFENSES

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Summary

By preventing the commission of offenses, we refer to the set of actions undertaken to avert the perpetration of acts criminalized by criminal law – an endeavor that represents the primary objective of the state's criminal policy.

This activity is generally carried out through the incrimination of acts under criminal law, the consequence of committing such acts being criminal sanction, and, more specifically, through the correct legal classification and sanctioning of the acts committed.

In legal doctrine, the criminal policy of crime prevention refers, in a first evaluation, to the existing criminal legislation and the sanctions it provides, then to the specialized institutions for prevention and specialized social control against criminality, as well as to society's overall attitude toward criminal acts.

In the prevention of offenses, particular emphasis is placed on the neutralization of offenders, for the protection of social order, as well as on holding those guilty criminally accountable with the aim of their re-education.

At the same time, it is necessary to prepare actions aimed at identifying and mitigating potential causes of criminality, as well as implementing preventive measures, through the organization of educational activities within society, and especially among public officials, when referring to the prevention of the commission of public office offenses.

It is worth noting that the term "prevention" as used in criminal law has two meanings: a sociological and criminological one, which encompasses the totality of actions undertaken to identify, understand, and limit the social and individual circumstances – general or specific – that directly or indirectly lead to the commission of offenses; and a juridical-criminal meaning, namely the effect that the incriminating norm has on the members of society. This includes so-called general prevention, through the knowledge of the norm and, implicitly, the sanction, as well as specific prevention, through the application of the norm to those who have violated the provisions of criminal law.

At present, it is well established that preventive criminal policies are more effective, even though prevention does not allow for general control or the eradication of criminal phenomena. Nevertheless, it has been observed that crime can be reduced, whereas repressive criminal policies demonstrate lower levels of effectiveness.

Thus, prevention must intervene as deeply as possible across various categories of incrimination, with public office offenses representing norms of incrimination that safeguard the proper functioning of state institutions—serving as a guarantee not only for society but also for international institutions.

The concrete methods of prevention must be permanently identified and developed in accordance with the evolution of society, so that those to whom the law assigns a specific professional qualification may fully understand the conduct that must be observed in order to avoid conflict with the applicable criminal norms.

Keywords: prevention, offenses, criminal policy, public officials, criminality.

Introduction. As is to be expected, criminal law doctrine increasingly refers to criminal policy aimed at preventing criminality, which primarily concerns the legislation in the field – particularly the manner in which those who come into conflict with criminal law are sanctioned – then the organization and functioning of entities specialized in crime prevention, and finally, the reaction of the individual in particular and of society in

general toward the violation of criminal law.

Thus, criminal legislation has as its principal aim the control and even the reduction of the phenomenon of criminality. Social protection, in this context, refers to the individual protection of the citizen, the protection of the state through the safeguarding of public and private institutions – this being achieved through the application of firm sanctions and through the reeducation and reintegration of the delinquent individual into society.

In order to fulfill this objective, it is also necessary to identify the main sources with criminal potential and to apply preventive measures that possess, on the one hand, a sociological dimension targeting the totality of activities directed at identifying causes, the so-called *general prevention*, and, on the other hand, a legal-criminal dimension, referring to the effects that criminal law and its enforcement produce in diminishing criminality, namely *special prevention*.

It has been observed that special importance must be given to general preventive policy, that is, non-repressive policy, since repressive policy implies high costs for the state with limited results, whereas a policy largely based on prevention provides society with an added benefit.

Since public office offenses, as provided in Chapter II of the Special Part of the Criminal Code, involve incriminations relating to acts committed in the exercise of public duties, whether by public officials or by private individuals performing a profession of public interest, their incidence is significant in judicial practice. The necessity of preventing their commission is increasingly urgent, especially in the current context in which Romania is party to treaties that require the highest standards of compliance [1, p.51].

Referring to the prevention of public office offenses in the analysis of the two forms of prevention – general and special – we observe that general prevention is fulfilled once the penalty is established within the incrimination norm, assuming that the provision of the norm is known to the public official and is respected due to the deterrent effect of the punishment. The exemplarity resulting from the application of punishment in the case of those who have come into direct conflict with the criminal norm constitutes a fulfilled function of the penalty.

However, for this effect to be achieved, it is necessary for the public official, or the person assimilated to a public official in the criminal law sense, to possess at least minimal knowledge of criminal law.

The New Administrative Code, which is also Romania's first administrative code, adopted through Government Emergency Ordinance No.57/2019, establishes the rights and obligations of public institutions and authorities concerning the professional development of their personnel. However, it only regulates knowledge of criminal legislation in administrative terms, particularly with regard to public office offenses, and does not treat it as a necessity.

Thus, considering the importance of preventing such offenses in light of the social values protected through the incrimination of such acts – specifically, the set of social relations that develop and unfold in connection with the proper functioning of official duties, namely the correct execution of public office obligations as the general legal object – we find that it is necessary to approach the training and continuous evaluation of the public official, as the active subject of public office offenses, through a deepened understanding of criminal law notions relevant to these incriminations.

We consider it necessary to understand the distinction between the notion of public

official in the administrative sense and in the criminal law sense in order to identify which categories may constitute active subjects of offenses involving this requirement, namely, the offenses in the Criminal Code under Title V Offenses of Corruption and Public Office Offenses, Chapter II Public Office Offenses, specifically Articles 295-309. A firm grasp of the structure of incrimination, the pre-existing conditions, the constitutive content, the forms of commission and sanctioning, as well as notions from the field of preventive measures, the individualization of penalties included in the general part of criminal law, and the execution of those penalties as regulated by Law No.254/2013 on the execution of sentences and custodial measures, is equally necessary.

Analyzing special prevention, we note that it has an individual, personal character, aimed at the one found guilty and sentenced, preventing them from committing other crimes during the execution of the sentence. After this period, it is assumed that, based on the severity of the sentence or the manner of execution, the individual has understood the consequences of their antisocial actions, and is now completely reeducated and fit for social reintegration upon completing the sentence.

Thus, after examining the incidence of these offenses in judicial practice, acts that have been punished based on final rulings and have been executed, it is our opinion that, in addition to the reeducation provided within the penitentiary system through educational courses, professional qualification or retraining programs, participation in cultural activities with an educational character, and granting privileges to those who work and provide substantial evidence of improvement, it is necessary for these individuals to attend courses related to criminal law institutions, such as the institution of recidivism, specifically post-executory recidivism. This is to help them understand that if, after having served or considered to have served their previous sentence, and prior to rehabilitation or completion of the rehabilitation period, they commit another offense with intent or aggravated intent – an offense for which the law prescribes a prison sentence of one year or more, or life imprisonment – the special limits of the sentence prescribed by law for the new offense will be increased by half, according to Article 43 of the Criminal Code, sentence in case of recidivism.

The importance of such training courses is relevant both from a general and a particular perspective, especially in the case of the individual being reassigned to a public position or an equivalent position after rehabilitation.

Furthermore, for effective prevention, in addition to these legal education measures for public officials, it is necessary to have a clearly and rigorously regulated legislative framework, which does not allow judicial authorities to interpret the incrimination norm in a divergent manner. It is also crucial to establish specific public office duties in alignment with this legal clarity.

In this context, we mention Decision No.405 of June 15, 2016, regarding the exception of unconstitutionality of the provisions of Article 246 of the 1969 Criminal Code, Article 297 (1) of the Criminal Code, and Article 132 of Law No.78/2000 for the prevention, discovery and sanctioning of corruption offenses, through which the exception of unconstitutionality of the provisions of Article 246 of the 1969 Criminal Code and Article 297 (1) of the Criminal Code is accepted, and it is concluded that the provisions of Article 246 (1) of the 1969 Criminal Code and Article 297 (1) of the Criminal Code are constitutional, insofar as the phrase “defectively fulfills” within them is interpreted as “fulfilling through the violation of the law”.

As a result of this decision, the Romanian Parliament adopted Law No.200 of July 5, 2023, for the amendment and supplementation of Law No.286/2009 regarding the Criminal Code, as well as other normative acts, published in the Official Gazette No.616 of July 6, 2023. Through this law, the constitutive content of the offense incriminated under Article 297 of the Criminal Code concerning abuse of office was modified. The law now stipulates that it constitutes a criminal offense when "*a public official, in the exercise of their public office duties, fails to fulfill an act required by a law, a government ordinance, an emergency government ordinance, or another normative act which, at the time of its adoption, had the force of law, or fulfills it in violation of a provision included in such a normative act, thereby causing damage or harming the rights or legitimate interests of a natural or legal person; such conduct shall be punishable by imprisonment from 2 to 7 years and the prohibition of the right to hold a public office.*" This amendment thus removes the phrase "performs defectively", which had generated significant confusion in judicial practice.

The Constitutional Court issued this directive on the grounds that the phrase "performs defectively" did not meet the qualitative requirements imposed, on the one hand, by the Constitution, and on the other, by the Convention for the Protection of Human Rights and Fundamental Freedoms. The Court found the wording to be insufficiently precise to allow the subject of the law to adapt their conduct accordingly. That is, the provision lacked the necessary clarity for individuals to reasonably foresee, in light of the case's specific circumstances, the consequences that might result from a particular act, and to modify their behavior to avoid such outcomes.

These legislative clarifications align with contemporary criminal doctrine, which further develops two additional forms of prevention. *Defensive prevention* is based on the fear of exclusion from society, of isolation, and of dehumanization – achieved through the imposition of difficult circumstances that entail the curtailment of fundamental rights such as liberty. *Emancipatory prevention*, by contrast, is rooted in sound social and moral values, emphasizing the population's capacity to resist criminal temptation in certain contexts. It rests on the idea that citizens will respond constructively to social or institutional problems, provided they are guided by a coherent and just legal and moral framework [2; 3; 4, p.163-168; 5].

In the same context, we must also mention the recommendations of the Council of Europe in the field of crime prevention, according to which each member state has the obligation to implement within its own legal system a criminal policy that is rational and highly coherent in order to prevent the commission of criminal offences. This policy should comprise, on the one hand, *social prevention*, achieved through the continuous education and information of society's members, and on the other hand, *situational prevention*, achieved through the application of measures that limit risk situations for criminal activity, including sanctions and the safe reintegration of offenders into society.

At the same time, in order to prevent offences committed in the exercise of public office, criminal policy must identify several essential principles that are applicable across major European countries. One such principle is the *principle of determined scope of application*, which implies the implementation of preventive measures in a specific, clearly defined territorial area – for example, an administrative-territorial unit where civil servants, as qualified active subjects of public office offences, operate within formal employment structures.

Prevention can be carried out both through the acquisition of knowledge in the field

of criminal law and through professional development activities targeting civil servants within particular sectors of activity grouped according to the same territorial-administrative unit.

Another important tenet is the *principle of partnership*, which refers to close cooperation and collaboration between citizens and local representatives for the prevention of criminality. This principle not only contributes to transparency in the activities of public officials, but also supports the *principle of contractualization*, whereby the state acts as the primary agent responsible for initiating primarily at the national, but also at the local level, the establishment of specialized prevention entities. These entities are tasked chiefly with implementing research-based programs on public office offences and other crimes, rooted in the social and economic reality, and fostering cooperation between institutions [6, p.169-170].

We must mention the Specialized Training Program for the Occupation of a Public Office corresponding to the category of high-ranking civil servants, which is carried out through a nationally organized competitive examination. This examination takes place in two stages: first, the selection of application files, and second, an interview.

It is worth noting that the competition's subject matter includes topics related to national and European legal provisions applicable to the exercise of high-level public offices, along with fundamental knowledge of the Romanian Constitution, the Administrative Code, certain legislative drafting rules, general references to anti-corruption laws found in the Criminal Code and in special laws, as well as regulations concerning transparency in public administration. However, there is a complete absence of content regarding public office offences, a gap that highlights the need to supplement the examination curriculum with such material.

To develop an effective criminal prevention policy in the field of social relations that occur in connection with public office service, a coordinated and collaborative effort is necessary. This must involve the executive, the legislature, the judiciary, legal professionals, the academic sector (especially law faculties), civil society, professional and practitioner associations in the field of criminal law, as well as the analysis of jurisprudence from Romanian courts, the Constitutional Court, the Court of Justice of the European Union, and the European Court of Human Rights.

According to a press release from the Ministry of Justice, the judiciary currently operates under three core strategic frameworks, developed with input from judges and prosecutors and through consultation with the Superior Council of Magistracy (SCM) and the Public Ministry.

These three strategies aim to update criminal policy and legislation in alignment with today's societal demands and standards. However, their focus is primarily directed at issues such as corruption, organized crime, environmental criminality, and limiting criminal access to financial resources. Specifically, the strategies are as follows:

– The National Strategy against Organized Crime (SNICO) 2021-2024;

– The National Anticorruption Strategy (SNA) 2021-2025;

– The National Strategy on Recovering Crime-Related Assets for 2021-2025 – under the slogan "Crime Doesn't Pay!";

– The Judicial System Development Strategy 2022-2025.

Notably, the phenomenon of public office offences – a subject extensively debated even within civil society – remains entirely absent from these strategic documents.

In conclusion, a timely and comprehensive debate is imperative in order to implement a criminal prevention policy that also addresses the area of offences analyzed here in a realistic and coherent manner. This involves introducing additional study requirements regarding applicable criminal law provisions to truly support public servants in understanding the criminal legislation and to eliminate the fiction that everyone is presumed to know the law, thereby fully guaranteeing the protection of the social values at stake.

The fight against public office offences in Romania is a declared objective of the authorities and judicial institutions. However, reducing this phenomenon cannot be achieved without raising awareness about the dangers of committing such acts and the corresponding criminal sanctions. This awareness can only be realized through the acquisition of both general and special criminal law knowledge, which must become a mandatory condition for holding or performing any role that qualifies one as a public servant in the criminal law sense.

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THE IMPACT OF NEW EUROPEAN UNION REGULATIONS ON THE FORENSIC INVESTIGATION OF MONEY LAUNDERING OFFENSES AS A COMPONENT OF INTERNATIONAL COOPERATION

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Summary

This article addresses the impact of recent European Union regulations on the forensic investigation of money laundering offenses, emphasizing the importance of international cooperation and the harmonization of the European legal framework. The author analyzes and examines the evolution of EU legislation, from the adoption of Directive 2005/60/EC and Directive 2006/70/EC to the most recent reforms. The study evaluates how these legal instruments influence mechanisms for the prevention, supervision, and investigation of suspicious transactions, highlighting their role in strengthening efforts to combat financial crime.

In the course of this research, the author identifies several challenges associated with the implementation of these regulations, including difficulties in information exchange between financial institutions and competent authorities, the risks arising from over-reporting of suspicious transactions, and the complexities of monitoring sophisticated financial flows, including those involving crypto-assets. To address these shortcomings, the author proposes solutions aimed at enhancing international cooperation, optimizing reporting mechanisms, and implementing advanced technologies for the analysis of financial transactions.

Keywords: money laundering, European Union, international cooperation, forensic investigation, financial regulations, transparency, prevention, AMLA, Europol.

Introduction. The evolution of economic and financial crime, particularly with regard to money laundering, has become a major challenge for states and international organizations alike, prompting the need for increasingly sophisticated counterstrategies. The expansion of financial markets, the digitalization of transactions, and the proliferation of emerging technologies have facilitated the development of complex methods for concealing the illicit origin of funds, thereby requiring a legislative and institutional response tailored to the dynamic nature of criminal activity. In this context, the European Union has played a pivotal role in shaping a coherent regulatory framework and in imple-

menting effective oversight and prevention mechanisms.

The proliferation of illicit activities generating substantial profits has made money laundering a central element of organized crime, threatening the integrity of financial systems and the economic stability of states. To counter these risks, the European Union has progressively developed a body of regulations aimed at standardizing measures for preventing and investigating suspicious financial flows. However, the complexity of this phenomenon and the ability of offenders to identify and exploit legal loopholes have necessitated a dynamic approach, in which adopted norms must be continuously adjusted to remain effective.

The need for ongoing legislative reform has become increasingly apparent as the methods used for laundering money have evolved and diversified. Traditional financial supervision mechanisms have proven inadequate in the face of new criminal techniques, such as the use of cryptocurrencies, the integration of illicit funds into international corporate networks, or the exploitation of regulatory gaps in permissive jurisdictions. Consequently, EU Member States have been compelled to adopt stricter measures and to establish specialized institutions responsible for overseeing and enforcing anti-money laundering (AML) regulations.

In this framework, the impact of recent reforms, particularly those enacted in 2024, is crucial to understanding how the European Union seeks to address contemporary challenges. The creation of specialized authorities, the reinforcement of reporting and monitoring systems, and the enhancement of international cooperation represent some of the key measures undertaken to strengthen the efficiency of the EU's AML regime. Nevertheless, the effectiveness of these initiatives depends not only on the quality of the regulations themselves, but also on the Member States' capacity to implement them in a uniform and efficient manner.

This study explores the impact of these reforms on the forensic investigation of money laundering offenses, with an emphasis on the need for innovative approaches and continuous adaptability of both legislative and institutional mechanisms. It also examines the role of newly established institutional structures and assesses the effectiveness of the measures adopted to enhance the capacity to detect, sanction, and prevent money laundering within the European Union. Furthermore, this analysis aims to highlight the strengths and weaknesses of the European regulatory framework, thereby providing a foundation for potential legislative and operational improvements in the international fight against financial crime.

Methods and materials applied. The present research employs a comprehensive methodology, grounded in theoretical, normative, and empirical frameworks which enables a thorough examination of the impact of new European Union regulations on the forensic investigation of money laundering offenses. The study is based on the application of scientific methods specific to the field of forensic science, designed to provide an in-depth understanding of the evolution of EU regulations and their implications for international cooperation. To explore the theoretical dimension of the subject, the logical method was employed, allowing for the correlation of legislative and doctrinal elements with the operational aspects of money laundering investigations. The comparative analysis method was used to assess the changes introduced by the new European regulatory framework in relation to previous standards, thereby identifying both progress made and remaining shortcomings. Furthermore, the systemic analysis method proved essential for

examining the interactions between legal norms, institutional structures, and operational mechanisms involved in combating financial crime. This integrated approach enabled the construction of a coherent analytical framework for understanding how recent legislative reforms influence both preventive strategies and the effectiveness of forensic investigations into money laundering. By correlating doctrinal analysis with legal practice and institutional dynamics, the research offers a multidimensional perspective on the mechanisms through which the European Union strengthens its response to transnational financial criminality.

Research objective. This research aims to analyze the impact of the new European regulations on the forensic investigation of money laundering, taking into account the essential role of international cooperation in combating this phenomenon. The study focuses on evaluating recent legislative measures, identifying the main challenges encountered in their implementation, and formulating proposals to improve investigative mechanisms.

In this context, the analysis concentrates on examining the effectiveness of the legal instruments adopted at the European level, their impact on national investigation systems, and the extent to which the new regulations facilitate the identification and tracking of suspicious financial flows. The research also seeks to highlight how strengthening financial transparency, introducing stricter reporting mechanisms, and expanding the supervision of entities involved in financial transactions contribute to enhancing the fight against money laundering.

By examining the regulatory framework, doctrinal interpretations, and the practical application of the new norms, the study aims to provide solutions for improving coordination between the institutions involved, optimizing information exchange among Member States, and developing investigative methods adapted to current economic and technological realities. Thus, this research contributes to strengthening knowledge in the field of forensic investigation of money laundering and outlining reform directions that support the European Union's efforts in combating transnational financial crime.

Discussion and results obtained. Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 [1], together with Commission Directive 2006/70/EC of 1 August 2006 [2], marked a crucial moment in the consolidation of the European regulatory framework for the prevention and combating of money laundering and terrorist financing. Their adoption occurred in a global context characterized by the intensification of illicit financial flows, which required effective measures to secure the financial system and align European regulations with international standards.

Directive 2005/60/EC established a unified legal framework, imposing extensive customer due diligence measures, the reporting of suspicious transactions, and strict controls over financial institutions and other regulated entities. Among the most important provisions were the identification of beneficial owners, the prevention of the use of shell banks, and the obligation to report to Financial Intelligence Units (FIUs). It also imposed stricter obligations on entities managing public and private funds, reinforcing supervisory mechanisms against terrorist financing.

Directive 2006/70/EC complemented this regulatory framework by clarifying the status of politically exposed persons (PEPs) and establishing technical criteria for the application of simplified customer due diligence measures. It introduced important clarifications regarding exceptions from reporting obligations for low-activity financial entities, delineating the responsibilities of supervisory institutions.

During their implementation period, these directives were praised for their essential role in enhancing financial transparency and reducing vulnerabilities within the European economic system. However, their application also revealed a series of challenges. One of the main issues identified was the difficulty in identifying the actual beneficiaries of transactions, which continued to allow the use of offshore entities to conceal the source of funds. Moreover, the lack of effective mechanisms for information exchange between financial institutions and law enforcement authorities represented a major obstacle to the investigation and prevention of money laundering.

The debate on the effectiveness of these directives highlighted that, although they improved the security of the financial system, they failed to completely eliminate the risks associated with money laundering. Compliance procedures were considered excessively bureaucratic, generating high costs for financial institutions, and discrepancies in implementation among Member States led to an inconsistent application of the measures. Furthermore, the continued use of jurisdictions with permissive regulations allowed significant gaps in the prevention and control framework to persist.

As a result of these shortcomings, on 20 May 2015, the European Parliament and the Council of the European Union adopted Directive (EU) 2015/849 [3], which repealed Directives 2005/60/EC and 2006/70/EC. The new Directive (EU) 2015/849 introduced essential reforms for protecting the integrity of the financial sector by setting clear requirements for credit institutions, financial entities, and other obliged organizations to implement rigorous customer due diligence measures, report suspicious transactions, and maintain proper records.

A key element of this regulatory framework is the identification of beneficial owners, aimed at preventing the use of opaque legal structures to conceal illicit funds. Moreover, the new regulation incorporated the recommendations of the Financial Action Task Force (FATF), thereby strengthening anti-money laundering measures at the European level.

A fundamental principle of the directive is the risk-based approach, which allows Member States to allocate supervisory resources based on identified vulnerabilities. In this regard, additional measures were introduced for high-value cash transactions and enhanced obligations for high-risk sectors, such as gambling and electronic money. At the same time, to ensure the effective monitoring of suspicious financial flows, the directive mandates extended international cooperation and the rapid exchange of information between competent authorities, thus reinforcing oversight mechanisms at the European level.

An essential component of this framework is the role of financial institutions in reporting suspicious transactions. Under Directive (EU) 2015/849, banks, payment institutions, and other financial entities are required to implement strict Know Your Customer (KYC) procedures and apply enhanced due diligence in the case of high-risk transactions. However, despite these strict regulations, significant challenges remain regarding the effectiveness of reporting. M. Levi and P. Reuter highlight that “an excess of suspicious transaction reports can generate an overwhelming volume of data, making it difficult to analyze and thus impairing the real capacity of authorities to investigate relevant cases” [4, p.362, p.289–375]. Additionally, J.C. Sharman criticizes the tendency to impose excessive obligations on financial institutions without ensuring clear mechanisms for analyzing and utilizing the information provided [5, p.145].

The observations made by M. Levi and P. Reuter, as well as by J.C. Sharman, reflect a

fundamental issue within the regulatory framework for preventing and combating money laundering, namely the balance between compliance and operational efficiency. Although the current system imposes strict obligations on financial institutions regarding the reporting of suspicious transactions, the excessive volume of collected data may become counterproductive, undermining the real investigative capacity of competent authorities.

One of the main risks identified by M. Levi and P. Reuter is the phenomenon of "over-reporting," which occurs when financial institutions, in an effort to avoid sanctions, submit an excessive volume of information, including data on transactions that do not raise actual suspicions. This trend can overwhelm Financial Intelligence Units (FIUs) and lead to a dilution of investigative efficiency, as resources are directed toward processing irrelevant reports instead of focusing on high-risk transactions.

On the other hand, J.C. Sharman's observation regarding the lack of clear mechanisms for analyzing and using collected information is well-founded. In many cases, reports are not correlated with advanced data analysis systems, and the absence of intelligent selection of relevant information leads to operational inefficiency. Without sorting algorithms and clear criteria for assessing suspicious transactions, competent authorities face the challenge of managing an enormous volume of information without being able to prioritize cases requiring urgent intervention.

From a forensic perspective, the effectiveness of financial investigations depends not only on the volume of information collected but also on the authorities' ability to quickly extract essential data. The implementation of technologies based on artificial intelligence and big data analysis could represent a solution for efficiently filtering genuinely suspicious transactions. At the same time, harmonizing reporting mechanisms among European Union Member States would allow for the creation of a centralized database, facilitating the exchange of information between financial institutions and law enforcement bodies.

Thus, although the obligations imposed by the European regulatory framework are justified by the need for strict control over suspicious financial flows, the excess of unfiltered reports and the lack of a clear methodology for analyzing them may reduce the effectiveness of anti-money laundering efforts. In this respect, a reform of the reporting system is necessary – one that includes more precise criteria for selecting suspicious transactions, improved inter-institutional cooperation, and advanced data processing mechanisms – so that relevant information is used strategically and operationally, and authorities' resources are efficiently directed toward high-priority cases.

Directive (EU) 2015/849 was amended by Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018 [6], which strengthens the measures for preventing the use of the financial system for money laundering and terrorist financing. It introduces stricter rules regarding financial transparency, the identification of beneficial owners, and the supervision of suspicious financial transactions. The directive addresses new risks associated with modern terrorist financing methods, emphasizing the need to increase the transparency of financial transactions, corporate entities, and legal structures. It highlights the importance of tighter oversight of virtual currencies and digital wallet service providers, considering the risks linked to their anonymity. In addition, stricter restrictions are imposed on the use of anonymous prepaid cards, limiting the maximum permitted value to prevent their use in illicit activities.

To improve the fight against money laundering, the directive imposes new obli-

gations on Member States regarding the exchange of information between competent authorities and Financial Intelligence Units (FIUs). It requires the creation of centralized registers containing information about bank account holders and the beneficial owners of legal structures, allowing rapid access for responsible authorities. Furthermore, the directive expands the list of entities subject to reporting obligations to include cryptocurrency service providers and professionals involved in high-value financial transactions, such as real estate agents and art dealers.

This provision is also supported in the literature. Thus, "the effectiveness of combating this phenomenon requires the strengthening of bilateral and international cooperation, both between Financial Intelligence Units (FIUs) and with law enforcement authorities and other competent entities in the field of information exchange and mutual legal assistance" [7, p.20, p.15-39].

The next mechanism is Directive (EU) 2017/1371 of the European Parliament and of the Council of 5 July 2017 [8], which establishes the necessary legal framework for the protection of the European Union's financial interests through the harmonization of criminal law rules related to fraud and other offenses affecting the EU's financial resources. It replaces the previous regulatory framework and introduces stricter measures to combat financial abuses that have a direct impact on the budget of the Union and its Member States. The directive defines the offenses affecting the EU's financial interests, including fraud involving EU budget revenues and expenditures, money laundering derived from such offenses, passive and active corruption, as well as the misappropriation of European funds. Clear sanctions are established for both individuals and legal entities involved in fraudulent activities, and for offenses causing significant damage, maximum penalties of at least four years of imprisonment are provided.

An essential aspect of the directive is the imposition of measures to prevent and combat VAT fraud, particularly in cross-border cases where the damage exceeds 10 million euros. This regulation targets serious forms of fraud, such as carousel fraud, which affect the common VAT system and have serious implications for the Union's budget. The directive emphasizes the importance of cooperation among Member States and EU institutions such as Eurojust, the European Public Prosecutor's Office (EPPO), and the European Anti-Fraud Office (OLAF), for investigating and sanctioning economic and financial crimes. In addition, measures are provided for the recovery of illegally obtained funds and for penalizing legal entities that facilitate such offenses.

Another EU directive is Directive (EU) 2018/1673 of the European Parliament and of the Council of 23 October 2018 [9], which establishes a strengthened legal framework for combating money laundering through criminal law measures, with the aim of aligning the legislation of Member States and enhancing international cooperation. This directive complements Directive (EU) 2015/849 by focusing on criminal sanctions and coercive measures intended to deter and effectively punish this offense. The directive defines money laundering as the conversion, transfer, concealment, or use of property derived from criminal activity, reinforcing Member States' obligations to criminalize such acts. Criminal liability is also extended to legal persons, imposing severe sanctions, including fines and prohibitions for entities involved in illicit activities. Additionally, self-laundering is regulated, criminalizing cases in which the person who committed the predicate offense launders their own illicit funds. An important element of the directive is the establishment of minimum penalties for money laundering offenses. It also recommends the

confiscation of illegally obtained assets and the implementation of effective measures for tracking suspicious transactions.

The directive encourages international cooperation between the authorities of Member States for the investigation and prosecution of financial crimes, removing legal obstacles that previously hindered the exchange of information and collaboration between national institutions. The use of modern investigative tools is promoted, including electronic surveillance and the analysis of financial flows.

To strengthen the instruments for combating financial crime, facilitate cooperation among Member States, and ensure an effective mechanism for tracking suspicious financial flows and sanctioning economic and financial offenses, Directive (EU) 2019/1153 [10] was adopted at EU level. It establishes rules to facilitate authorities' access to financial information and to improve international cooperation in the prevention, detection, investigation, and prosecution of serious criminal offenses. The directive requires Member States to establish centralized bank account registers in order to allow rapid and direct access by competent authorities to relevant financial data. Beneficiaries of this access include Financial Intelligence Units (FIUs), asset recovery offices, tax authorities, and anti-corruption agencies. The main objective is to accelerate the identification, tracing, and freezing of assets derived from criminal activity.

A key element of the directive is the increase in information exchange between the FIUs of Member States, thereby strengthening cross-border cooperation in financial investigations. Clear rules are also established for the exchange of information with Europol. The directive introduces data protection measures to ensure the confidentiality and proper use of financial information. It is stipulated that the processing of such data must be carried out exclusively for the purpose of combating serious crimes and in compliance with the General Data Protection Regulation (EU) 2016/679.

On 30 May 2024, the Council of the European Union adopted a package of rules aimed at strengthening the fight against money laundering and terrorist financing. These measures are intended to protect EU citizens and the financial system by implementing uniform standards and improving cooperation between Member States. A central element of this package is the establishment of the Authority for Anti-Money Laundering and Countering the Financing of Terrorism (AMLA), which will directly supervise certain financial institutions and coordinate national authorities to ensure the effective and consistent application of the regulations. Additionally, the new rules include strict transparency requirements regarding the beneficial owners of companies and legal entities, as well as rules on crypto-asset transfers, ensuring their traceability to prevent their use for illicit purposes. This legislative package reflects the EU's commitment to combating financial crime and protecting the integrity of the internal market [11].

On 15 May 2024, the European Union adopted a new legislative framework [12] aimed at strengthening measures for the prevention and combating of money laundering and terrorist financing, in light of the need for a coordinated and effective cross-border approach. The shortcomings identified in the implementation of measures at the national level required the creation of a centralized mechanism to ensure uniform enforcement and eliminate vulnerabilities in the financial system. To address these challenges, the Authority for Anti-Money Laundering and Countering the Financing of Terrorism was established, with powers to directly supervise high-risk financial entities and coordinate national structures involved in preventing this phenomenon. The adoption of the new

legislative package includes strict regulations on the traceability of financial transactions, covering both traditional transfers and crypto-assets, thereby enhancing transparency and reducing the possibility of anonymous use of such means for illicit purposes. Increased obligations are imposed on financial service providers, as well as extended measures for identifying the beneficial owners of companies and legal entities. A key element of this new regulatory framework is the harmonization of supervision across all Member States, ensuring coherent implementation of regulations and preventing the use of certain jurisdictions to circumvent control measures. To facilitate the exchange of information and cooperation among states, Financial Intelligence Units (FIUs) will have expanded access to centralized registers of bank accounts, and Europol will be authorized to request relevant data for the investigation of criminal networks. Personal data protection and the implementation of security measures to prevent the misuse of financial information are also ensured. The new regulations impose an obligation on Member States to transpose the rules into national legislation and ensure rigorous enforcement, so that the integrity of the financial market is protected against the risks associated with economic crime.

On the same date, at the EU level, the Regulation on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing [13] was adopted. It establishes a uniform and binding legislative framework for the prevention and combating of money laundering and terrorist financing throughout the European Union and replaces Directive (EU) 2015/849, eliminating legislative discrepancies among Member States and ensuring consistent enforcement of oversight and control measures. The new regulations impose strict obligations on financial entities such as credit institutions, crypto-asset service providers, and financial intermediaries, which must adopt enhanced due diligence measures for identifying beneficial owners and preventing suspicious transactions. A centralized system for monitoring bank accounts is also introduced, allowing authorities rapid access to relevant information for the investigation of financial crimes. A central element of the regulation is the attribution of direct supervisory authority to the Authority for Anti-Money Laundering and Countering the Financing of Terrorism (AMLA) over high-risk entities and coordination of Member States' efforts. Special attention is given to the regulation of crypto-assets, with strict rules established for digital service providers to prevent virtual currencies from being used for illicit purposes. In addition, measures are provided to limit cash payments to €10,000, thereby reducing the likelihood of their use in illegal activities.

On 16 May 2024, the European Parliament and the Council of the European Union adopted another directive [14], which establishes mandatory mechanisms for Member States aimed at strengthening the fight against money laundering and terrorist financing. This directive amends Directive (EU) 2019/1937, repeals Directive (EU) 2015/849, and is part of a broader legislative package intended to harmonize and enhance the effectiveness of the European framework for combating financial crime. The new rules introduce stricter requirements regarding financial transparency, reinforcing the obligations of financial entities, crypto-asset service providers, and financial intermediaries. The creation of centralized registers of beneficial owners is mandated, facilitating authorities' access to essential information for investigating suspicious transactions and preventing illegal activities. Furthermore, the directive emphasizes limiting the use of cash and enhancing the monitoring of high-value financial transactions. For the supervision and coordination of legislation enforcement, the directive grants the Authority for Anti-Money Laundering

and Countering the Financing of Terrorism (AMLA) the right to monitor high-risk entities and facilitate information exchange between Member States. This authority will cooperate with Europol, Eurojust, and national Financial Intelligence Units (FIUs) to improve the detection and sanctioning of money laundering activities. The directive also addresses risks associated with crypto-assets, establishing clear requirements for digital service providers to ensure that virtual currencies are more strictly regulated and their illicit use limited. Moreover, mechanisms are regulated for controlling international financial flows, preventing the use of jurisdictions with lenient tax regimes to conceal illicit funds.

On 21 May 2024, the European Parliament and the Council of the European Union adopted a new directive [15], introducing measures to optimize competent authorities' access to centralized bank account registers and to facilitate the use of transaction records in criminal investigations. This legal act aims to strengthen cross-border cooperation and improve the effectiveness of the fight against financial crime, particularly money laundering and terrorist financing. Under the new regulations, Member States are required to allow competent authorities direct and immediate access to bank account registers through the Bank Account Registers Interconnection System (BARIS). This system ensures interoperability among national registers, facilitating the rapid exchange of information necessary for preventing and investigating serious crimes. The directive sets technical measures for standardizing the format of transaction records, enabling competent authorities to rapidly and efficiently analyze suspicious financial flows. In this context, financial institutions, including crypto-asset service providers, will be obligated to provide data in a structured and uniform format that allows for the automated processing of information. To protect data and prevent misuse, strict safeguards are imposed concerning the confidentiality of information, limiting access to designated authorities and establishing clear rules for the storage and use of financial data. The directive respects individuals' fundamental rights, ensuring a balance between security needs and the protection of privacy.

Another cooperation mechanism arises from the provisions of Regulation (EU) 2023/1113 of the European Parliament and of the Council of 31 May 2023 [16], which establishes a unified legislative framework for the traceability of transfers of funds and crypto-assets, strengthening measures to combat money laundering and terrorist financing. This legal act replaces Regulation (EU) 2015/847 and expands the scope of rules on the transparency of financial transactions by including, for the first time, transfers of crypto-assets. The new regulations impose strict obligations on financial and crypto-asset service providers, who must ensure that all fund transfers are accompanied by complete information on both the originator and the beneficiary. This data must be available to competent authorities and enable the rapid tracking of suspicious transactions.

Particular attention is given to the regulation of crypto-asset service providers, who will be required to apply the same transparency and reporting standards as traditional financial institutions. An essential element of the regulation is the introduction of technical measures for information exchange between payment service providers and crypto-asset service providers, thereby reducing the risks of transaction anonymization. Clear obligations are imposed regarding the reporting and record-keeping of financial transactions, especially those considered high-risk. To protect the European Union's financial market, the regulation provides for strict penalties for institutions that fail to comply with fund traceability requirements, thereby limiting the possibility of using the financial system for

illicit purposes. In addition, a strengthened framework for the supervision and monitoring of financial service providers is introduced, ensuring compliance with the international standards established by the FATF.

Conclusions. The new European regulations have strengthened the legal framework for the forensic investigation of money laundering offenses, enabling more effective information exchange between national and international authorities. By imposing strict reporting and monitoring mechanisms, they have allowed closer surveillance of suspicious financial flows and reduced opportunities for exploiting legislative loopholes. However, the effectiveness of this framework depends on the degree of uniform implementation across Member States and each national system's ability to assimilate the new investigative standards.

The integration of advanced forensic investigation mechanisms, including risk-based analysis and the monitoring of cross-border transactions, has significantly enhanced law enforcement authorities' ability to detect and sanction economic and financial crimes. The adoption of centralized bank account registers and the expansion of Financial Intelligence Units' competences have enabled rapid access to essential data for investigating criminal networks. Nonetheless, disparities in technical and operational capacities among Member States continue to pose a challenge to the uniform application of these regulations.

International cooperation in combating money laundering has been reinforced through the harmonization of investigative procedures and the creation of institutional structures dedicated to supervising this phenomenon, such as the Authority for Anti-Money Laundering and Countering the Financing of Terrorism (AMLA). The direct involvement of European entities such as Europol, Eurojust, and the European Public Prosecutor's Office has improved the coordination of transnational investigations, facilitating the tracking and freezing of illicit funds before their integration into the legal economy. However, the success of these measures depends on the flexibility and interoperability of national systems, as well as on the willingness of Member States to collaborate effectively in managing the risks associated with transnational financial crime.

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STARTING CRIMINAL PROSECUTION IN RELATION TO THE ACT: CONDITION FOR ISSUING THE TECHNICAL SUPERVISION MANDATE

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Summary

Research in the field of the procedure for prosecuting persons who evade criminal liability is absolutely necessary and to ensure the process of developing future policies and programs in line with good practices. There is also a need to offer suggestions for promoting an adequate social reaction regarding the procedure for prosecuting persons who evade criminal liability and who are involved in criminal activities. In addition, we consider it appropriate to approach the issue of the procedure for prosecuting persons who evade criminal liability in the study, by presenting the initiation of criminal prosecution in relation to the act, which emphasizes the importance of respecting the principle of legality and limiting criminal prosecution activities within a well-defined process.

Keywords: criminal trial, phase of criminal prosecution, methods, practices, initiation of criminal prosecution.

Introduction. Criminal prosecution is the first stage of the criminal process in which the foundations for the eventual trial in court are established. The non-public nature of the criminal investigation, the flexible duration and the clear objectives defined by law contribute to the achievement of the fundamental purpose of criminal justice: finding the truth and holding accountable those guilty of committing crimes, while protecting the rights of all those involved in the process. Regarding the persons who evade criminal liability during the criminal investigation phase, they follow the procedure and, depending on the legal limits, establish the mode of participation in the research.

Methods and materials applied. The methods applied include the logical method, by using the induction and deduction techniques, as well as the analytical method.

Discussions and results obtained. *1.General considerations regarding criminal prosecution in the new CPC ROM*. The Criminal Procedure Code (CPC) establishes, as a rule, the mandatory nature of initiating criminal prosecution prior to the performance of any investigative acts. Except for situations in which the notification act itself is informal, or those in which its very content results in a cause of non-proceedability, no procedural act can be performed outside the criminal trial, no evidence can be administered outside this framework. This new establishment of the concept regarding the limits and phases of criminal prosecution responds to certain requirements regarding the strict observance of

the principle of legality; the institution of preliminary acts, in the old regulation, did not fully respond to them (mainly because it allowed the collection of evidence outside the criminal process), and the weight that, in the practice of criminal investigation bodies, the use of this institution was known (often excessive even in relation to the provisions of the old code) created the need to establish a regulation that would no longer allow the carrying out of any activity specific to criminal investigation outside a well-defined procedural framework. Therefore in Art.305 para.(1) CPC according to which "when the notification act meets the conditions provided by law and it is found that there is none of the cases that prevent the exercise of the criminal action provided for in Art.16 para.(1), the criminal investigation body orders the initiation of criminal investigation with respect to the act" [1], the legislator established the obligation of the criminal investigation body to initiate criminal investigation, immediately after being legally notified.

In practice, the act immediately following the notification will necessarily be, in all cases, the order to initiate criminal proceedings regarding the act. Thus, no investigation can take place except under the conditions regarding the conduct of criminal proceedings; the new regulation no longer knows the phase preceding the initiation of criminal proceedings, of collecting the necessary data "in order to initiate criminal proceedings" (provided for under the previous regulation by Art.224 of the old Criminal Procedure Code). In addition, the new regulation no longer allows the initiation of criminal proceedings directly against a specific person even in the situation where this person is indicated in the notification act, or when it allows his identification. The conclusion is imposed by the fact that Art.305 para.(3) CPC requires that reasonable indications regarding the commission of the act by a specific person result from the existing data and evidence, and according to Art.97 para. (2) CPC [1], evidence can only be obtained in criminal proceedings.

As for the limits, content and scope of criminal prosecution acts that can be carried out after the commencement of criminal prosecution in respect of the act, under the conditions of Art.305 para. (1), the following must be specified: this is a procedural phase intended to collect evidence on the basis of which an accusation can be formulated against a person [1]. The formulation of an accusation in person cannot be the consequence of the simple registration of a valid complaint; being an act of increased significance and with important consequences regarding the person of the investigated person, the accusation of a person must be substantiated by a series of evidence, administered by means of evidence provided by law. Therefore, the mere commencement of criminal prosecution in respect of the act does not have the character of formulating an accusation against a person, but only has the significance of establishing the procedural framework in which the first evidence can be gathered in respect of a certain act. If, after the administration of evidence in this legal procedural framework, reasonable indications are outlined against a certain person, an accusation is to be formulated regarding him.

Thus, Art.305 paragraph (3) provides: "when reasonable indications result from the data and evidence existing in the case that a certain person has committed the act for which the criminal investigation was initiated, the prosecutor shall order that the criminal investigation be continued against him, who acquires the status of suspect" (s.n.). Prior to the order that the investigation be carried out regarding a certain person, he has no procedural status, so he is not the subject of any procedural rights or obligations. The analyzed legal provisions ensure the fair nature of the criminal investigation: on the one hand, they meet the requirement that any investigative acts be carried out within a procedural framework

(Art.305 paragraph (1); on the other hand, it establishes a guarantee in the sense that no person is accused in the absence of reasonable indications that he has committed an act provided for by the criminal law (paragraph (3) of Article 305). This guarantee subsists especially in the hypothesis in which, through the act of notification (complaint, denunciation, ex officio notification) a specific person is indicated as the presumed author.

The indication of a person in the notification act is not sufficient for this person to acquire the status of accused/ suspect or to consider that the criminal investigation targets him. This status will be acquired, during the criminal investigation, only after, based on the evidence administered, the criminal investigation will be ordered regarding him. This conclusion is led by the provisions of Art.289 of the Criminal Procedure Code, which, regulating the content of the criminal complaint, also refers to the "indication of the perpetrator", if he is known. However, if, as we have shown, the initiation of the criminal investigation regarding the act is mandatory immediately after the filing of the complaint, the coexistence of this provision with that of Art.305 paragraph (1) of the Criminal Procedure Code can only prove that the initiation of the investigation will be ordered only regarding the act, even if the perpetrator is indicated.

Also, from the perspective of the fair nature of the procedure ensured by these provisions, the following clarifications are required. In the form initially adopted by the legislator, the CPC RO did not contain any provision regarding the moment when a person acquires the status of suspect. If regarding the commencement of criminal prosecution regarding a certain act the procedural framework was unequivocally established (under the terms of Art.305 para. (1) CPC), the manner in which the accusation against a certain person was to be formulated was not provided for by the initial regulation. The only provision contained in Art.77 "the person regarding whom, from the data and evidence available in the case, there is a reasonable suspicion that he has committed an act provided for by the criminal law is called a suspect", did not provide certainty either as to the moment when the accusation is formulated, and, consequently, as to the moment from which a certain person, accused of committing a crime, can claim respect for his procedural rights, as well as the moment from which the same person can be required to respect procedural obligations. Such a gap would have allowed abuses of procedure on the part of the criminal investigation bodies (which, in the absence of an express legal provision, would not have been required at any time to inform a person of the "suspicion" they would have against him).

At the same time, after the commencement of the criminal investigation into the act, the administration of any means of evidence would have been subject to potential nullity, since, since it was not certain from which moment an accusation was made against the suspect, any evidence administered prior to his hearing would have been likely to be considered as having been administered in breach of the right to defense. These shortcomings were remedied by Law No.255/2013 [2], by amending Art.305 paragraph (3) in the sense analyzed above. Another reason why, by the same law, the in persona phase of the criminal investigation was regulated separately was the lack of correlation between the provisions of the code in the initially adopted form, which only established the criminal investigation of the act, and the constitutional norms which, regarding certain categories of persons, explicitly regulate the criminal investigation of the person. Thus, the amendments brought by Law No.255/2013 aimed to transpose the constitutional institution of criminal prosecution in persona and into procedural provisions of legal rank. For the same reasons, the provisions of paragraph (4) of Art.305, were also introduced by the same

normative act, referring to the categories of persons who may not be prosecuted unless certain prior conditions are met. In the context of these amendments, in relation to the criminal prosecution of certain categories of persons, a correlative analysis of the provisions of Art.294[1] with those of Art.305 is also required.

The phrase "commencement of criminal prosecution" in Art. 294[1] cannot be interpreted separately from the provisions of Art. 305 paragraph 4, according to which "with respect to persons for whom criminal prosecution is conditional on obtaining a prior authorization or fulfilling another prior condition, the conduct of criminal prosecution may be ordered only after obtaining the authorization or after fulfilling the condition" [1]. Thus, it must be admitted that, with respect to the explicit content of paragraph 4 of Art. 305 and taking into account the entire conception of the legislator regarding the two distinct stages of criminal prosecution, the authorizations and other conditions referred in Art. 294[1] are in reality necessary for the criminal prosecution to be carried out against a specific person, and not for the commencement of the prosecution with respect to an act.

2.*Commencement of criminal prosecution with respect to the act, condition for issuing the technical surveillance warrant*. According to Art.140 CPC, technical surveillance is ordered during the criminal prosecution. Given the considerations in point 1, the phrase "during the criminal investigation" in this article refers to any time after the initiation of the criminal investigation into the act, according to Art.305 para. (1) CPC. This idea is also supported by the fact that the criminal investigation against a person cannot exist independently, in the absence of the initiation of the criminal investigation into the act, but is a consequence thereof. That is why, the legislator used, with regard to this procedural phase, the phrase "continuing the criminal investigation". The text does not provide for the condition that the criminal investigation body has also ordered the conduct of the criminal investigation into a specific person. Thus, after the initiation of the criminal investigation into the act under the conditions of Art.305 para. (1), the case is "during the criminal investigation", a phase in which the accusation has not been formulated with regard to a specific person, so no person has the status of suspect.

As we have shown, neither the provisions of Art. 294[1] CPC do not contradict this conclusion, since these provisions can only be viewed in correlation with those of Art.305 para. (4) (as they were analyzed in the preceding). On the other hand, although technical surveillance involves an interference in the private life of a certain person, the use of this research method only has the meaning of investigating an act (the one for which the prosecution was initiated), and does not amount to the formulation of an accusation against that person. Therefore, the provisions of Art.139 and Art.140 refer only to the existence of a reasonable suspicion regarding the commission of a „crime" – thus regarding a criminal act, and not regarding its author.

According to Art.138 para. (13) CPC [1], technical surveillance means the use of one of the following research or surveillance methods: interception of communications or any type of remote communication, access to an information system, video, audio or photographic surveillance, location or tracking by technical means and obtaining data regarding a person's financial transactions.

In conclusion, from the point of view of the procedural moment, the only condition for issuing the technical surveillance warrant is the commencement of criminal proceedings in respect of the act, the procedure being in no case conditioned by the conduct of criminal proceedings against a person. To argue the contrary or to interpret the legal provisions in

the sense that technical surveillance may only be ordered after the notification of a person means, on the one hand, to violate the legal provision (by adding a condition not foreseen by the norm), and on the other hand, to ignore the content of Art.305 CPC, according to which criminal proceedings commence in respect of the act, and not in respect of the person.

3.*Rights of the parties*. Parties and subjects of proceedings who do not speak or understand Romanian language, even if they pretend to do so in order to evade the procedure, or cannot express themselves, are provided, free of charge, with the possibility of becoming acquainted with the documents in the case file, of speaking, as well as of submitting conclusions in court, through an interpreter. In cases where legal assistance is mandatory, the suspect or defendant is provided, free of charge, with the possibility of communicating, through an interpreter, with the lawyer in order to prepare for the hearing, to file an appeal or any other request related to the resolution of the case.

A. Stages of the investigation?

Evidence collection stage/ Investigators' competence. In order to achieve the object of the criminal investigation, the criminal investigation bodies are obliged, after notification, to search for and collect data or information regarding the existence of crimes and the identification of the persons who committed crimes, to take measures to limit their consequences, to collect and administer evidence. After the commencement of the criminal investigation, the criminal investigation bodies collect and administer evidence, both in favor and against the suspect or defendant. The prosecutor supervises the activity of the criminal investigation bodies, so that any crime is discovered and any person who has committed a crime is held criminally liable. The prosecutor also supervises the activity of the criminal investigation bodies so that no suspect or defendant is detained except in the cases and under the conditions provided for by law.

Police custody. The criminal investigation body or the prosecutor may order the detention of the suspect or defendant if there is evidence or solid evidence from which there is reasonable suspicion that he has committed a crime and if the measure is necessary for the purpose of ensuring the proper conduct of the criminal trial, preventing the suspect or defendant from absconding from criminal prosecution or trial or preventing the commission of another crime. If it is considered necessary for the defendant to be arrested after being detained, the prosecutor shall notify the judge of rights and freedoms of the competent court, with a view to taking the measure of preventive arrest, at least 6 hours before the expiration of the detention period. In this case, the deadline for resolving the proposal for preventive arrest must be set before the expiration of the detention period.

Interrogation. During the criminal investigation, before the first hearing of the suspect or defendant, he is informed of his rights and obligations provided for by law (the obligation to appear when summoned by the judicial bodies, drawing his attention to the fact that, in the event of failure to comply with this obligation, a warrant may be issued against him, and in the event of absconding, the judge may order his preventive arrest; the obligation to communicate in writing, within 3 days, any change of address, drawing his attention to the fact that, in the event of failure to comply with this obligation, the summonses and any other documents communicated to the first address remain valid and it is considered that he has taken note of them). These rights and obligations are also communicated to him in writing, under signature, and if he cannot or refuses to sign, a report will be drawn up. At the beginning of the first hearing, the judicial body asks the suspect or defendant questions regarding his/her name, surname, nickname, date and place of

birth, personal identification number, parents' surname and first name, citizenship, marital status, military status, studies, profession or occupation, place of work, domicile and address where he/she actually lives and the address to which he/she wishes to be served with procedural documents, criminal record or whether another criminal trial is being conducted against him/her, whether he/she requests an interpreter if he/she does not speak or understand Romanian or cannot express himself/herself, as well as regarding any other data to establish his/her personal situation. The statements of the suspect or defendant shall be recorded in writing. The statement shall record the questions asked during the hearing, mentioning who formulated them, and the time of the beginning and end of the hearing shall be mentioned each time. If he agrees with the content of the written statement, the suspect or defendant signs it. If the suspect or defendant has any additions, corrections or clarifications to make, these are indicated at the end of the statement, followed by the suspect or defendant's signature. When the suspect or defendant cannot or refuses to sign, the judicial body records this in the written statement.

Pre-trial detention. The measure of pre-trial detention may be taken by the judge of rights and freedoms, 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:

– 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.

– 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.

– The defendant exerts pressure on the injured person or tries to reach a fraudulent agreement with him/her.

– 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.

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 susceptible to 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, outrage, judicial outrage, a corruption crime, a crime committed through information 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 entourage 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 remove a state of danger to public order.

The judge may order arrest, after the person has been heard in the presence of a

lawyer. The person may be arrested for a maximum period of 30 days. This period may be extended by the court. Each extension is limited to 30 days and the total period of preventive detention may not exceed 180 days during the criminal investigation.

B. Rights during the investigation?

The services of an interpreter/translator? If the person do not speak Romanian, an interpreter will be provided free of charge, as a way of complicating the investigation activity in the situation where Romanian is known.

Access to information and the file? After the investigation is completed, the right to consult the entire case file, which contains all the evidence against or in favor of you, is granted. Access to evidence is permitted in all cases, except in the case where, during the criminal investigation, the prosecutor restricts the consultation of the file on a justified basis, if this would prejudice the proper conduct of the criminal investigation. After the initiation of the criminal action, the restriction may be ordered for a maximum of 10 days.

The services of a lawyer and the right to inform a third party? Before giving the first statement, the party must be informed of the right to be assisted by a lawyer chosen or appointed ex officio to represent him/her. Immediately after detention, there is the right to inform or request the judicial body that ordered the measure to inform a family member or another person about the taking of the detention measure and about the place where the person is being detained. If the person is not a Romanian citizen, the right to inform or request the notification of the diplomatic mission or consular office of the state of which you are a citizen.

Legal assistance? With regard to the commission of a crime in a criminal trial, there is the right to be assisted by one or more lawyers throughout the criminal investigation, the preliminary chamber procedure and the trial. Legal assistance is provided when at least one of the lawyers is present.

– In principle, legal assistance is optional. Legal assistance for the suspect or defendant is mandatory in the following cases:

– When the suspect or defendant is a minor, detained in a detention center or in an educational center.

– When the suspect or defendant is detained or arrested, even in another case.

– When the security measure of medical hospitalization has been ordered against him, even in another case.

– If the judicial body considers that the suspect or defendant could not defend himself on his own.

– During the preliminary chamber procedure and during the trial in cases where the law provides for the crime committed a life sentence or a prison sentence of more than 5 years.

– In other cases provided for by law.

Burden of proof. In criminal proceedings, the burden of proof lies primarily with the prosecutor, and in civil proceedings, with the civil party or, as the case may be, with the prosecutor who exercises the civil action in the event that the injured person lacks legal capacity or has limited legal capacity.

What specific guarantees are provided for children? The Criminal Procedure Code provides that detention and preventive arrest may be ordered against a minor, exceptionally, only if the effects that deprivation of liberty would have on his personality and development are not disproportionate to the purpose pursued by taking the measure.

When determining the duration for which the preventive arrest measure is taken, the age of the defendant is taken into account as of the date when the decision is made to take, extend or maintain this measure.

What specific guarantees are provided for vulnerable suspects? If there is and is suffering from a serious illness that prevents participation in the criminal trial, there is the right to request the prosecutor to suspend the criminal prosecution, but the criminal investigation bodies continue to carry out all acts whose performance is not prevented by this situation, respecting the right to defense of the parties or subjects of the proceedings.

D. What are the legal deadlines for the investigation? Judicial bodies are obliged to conduct criminal prosecution and trial in compliance with procedural guarantees and the rights of the parties and subjects of the proceedings, so that the facts constituting crimes are established in a timely and complete manner, no innocent person is held criminally liable, and any person who has committed a crime is punished according to the law, within a reasonable time.

E. What are the preparations prior to the trial, including alternatives to preventive arrest and the possibilities of transfer to the Member State of origin (European judicial supervision order)? If preventive arrest has been ordered, there is the right to request the revocation or replacement of preventive arrest with another, lighter preventive measure: house arrest, judicial supervision or judicial supervision on bail.

House arrest may be ordered under conditions similar to those provided for preventive arrest and consists of deprivation of liberty, the execution of which is not carried out in a place of detention, but in the defendant's home.

During the criminal investigation, the prosecutor may order the taking of the measure of judicial control over the defendant, if this preventive measure is necessary for the purpose of ensuring the proper conduct of the criminal trial, preventing the defendant from evading criminal prosecution or trial, or preventing the commission of another crime.

Judicial control on bail may be ordered if the conditions for preventive arrest are met, this measure being considered sufficient to ensure the proper conduct of the criminal trial, preventing the defendant from evading criminal prosecution or trial, or preventing the commission of crimes, and consists of the deposit of a bail the value of which is established by the judicial body.

The procedure for the transfer of persons convicted under Framework Decision 2009/909/JHA is regulated in Law No.302/2004 [3] on international judicial cooperation in criminal matters (Articles 153-182).

F. Rights of the defendant during the trial. If an indictment has been issued upon completion of the criminal investigation, the prosecutors shall submit the file to the competent court. The court shall be determined according to the gravity of the crime and the place where the crime was committed or, as the case may be, according to the place where the suspect or defendant was apprehended, the residence of the suspect or defendant, if a natural person, or, as the case may be, the registered office of the defendant, if a legal person, at the time when the act was committed or according to the residence or, as the case may be, the registered office of the injured party.

If during the trial it is considered that the legal classification given to the act by the notification act is to be changed, the court is obliged to discuss the new classification and to draw the defendant's attention to the fact that he has the right to request that the case be left for later or that the trial be postponed, in order to prepare his defense.

If, in order to establish the legal classification, as well as if, after the change of the legal classification, it is necessary to administer other evidence, the court, taking into account the conclusions of the prosecutor, the parties or the injured person, orders the conduct of the judicial investigation.

If the new legal classification concerns a crime for which a prior complaint by the injured person is required, the court summons the injured person and asks him whether he intends to file a prior complaint. If the injured person files a prior complaint, the court continues the judicial investigation, otherwise ordering the termination of the criminal trial.

There is a right to be assisted by one or more lawyers throughout the criminal investigation, the preliminary chamber procedure and the trial, and the judicial bodies are obliged to make this right known. Legal aid is provided when at least one of the lawyers is present. In cases of compulsory legal aid, if a lawyer has not been chosen, the judicial body takes measures to appoint a lawyer ex officio. There is also the possibility of changing the lawyer during the trial.

Legal assistance is mandatory when the person in question is a minor, admitted to a detention center or an educational center, when the person is detained or arrested, even in another case, when the security measure of medical hospitalization has been ordered, even in another case, if the judicial body considers that the party could not defend himself, during the procedure in the preliminary chamber and during the trial in cases in which the law provides for the crime committed a life sentence or a prison sentence of more than 5 years, in other cases provided for by law.

In order to prevent and combat the acts provided for and punished by the criminal law, the criminal record is organized, as a means of knowing and operatively identifying the persons who have committed crimes against the person and his freedom, his patrimony and, in general, the legal order.

The criminal record keeps records of individuals and legal entities convicted or against whom other criminal or administrative measures have been taken in accordance with the Criminal Code, as well as of those against whom criminal procedural measures have been ordered.

The criminal record is organized by the Ministry of Administration and Interior and is kept by the Romanian Police units, through structures specialized in this field.

Conclusions. The legislation applicable in the criminal sphere is periodically modified to maintain the pace of economic, political, demographic, health, security and national safety transformations, given that the criminal phenomenon is taking on new dimensions. Working together to standardize legislation also regarding persons who evade criminal liability, but also to exchange experience between specialists in this study, is an integral part of the responsibilities of those who ensure the application of the rules of the rule of law.

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THE ROLE OF THE NATIONAL HEALTH INSURANCE COMPANY IN PREVENTING AND COMBATING ILLEGAL ACTIVITIES THAT CONSTITUTE OFFENCES WITHIN THE LIMITS OF ITS COMPETENCE

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Summary

This scientific study analyzes current issues regarding the legal framework and the role of the National Health Insurance Company as a competent authority to resolve, prevent and combat contraventional illegalities within the limits of its competence as a control body. The National Health Insurance Company, having the function of state controller in the management and ensuring transparency of financial means derived from the funds of compulsory health insurance by medical and pharmaceutical service providers, may examine certain improper executions or non-execution of obligations assumed in contracts for the provision of medical care (for the provision of medical services), contracts for the release of compensated medicines or regulatory acts, and apply sanctions based on the illegalities found, which attract legal consequences in the form of legal liability.

Thus, in the content of the study we reported the current phases of the contravention process, where the National Health Insurance Company has the mission to determine whether the action/inaction committed is or is not a contravention and the proposals to complete the legal framework regarding new phases of the contravention process.

Keywords: National Health Insurance Company, ascertaining agent, contraventions, contravention sanctions, compulsory health insurance fund.

Introduction. The degree of concern of state institutions in the segment of protecting the health of citizens directly influences the level of its development. The higher the degree of concern, the more the desire of the primary human needs to be healthy is ensured, the society has a healthy population with free and qualitative access to medical services.

The state, having the obligation to ensure the right to life of all its citizens, can achieve this activity by creating all the conditions for guaranteeing the right to private life, which also includes the right to quality health services.

Unfortunately, today, in the procedure for providing health services accessed from private or public providers under the mandatory health insurance system or for a fee, it is found that certain improper executions or non-execution of the obligations assumed may occur, which attract legal consequences in the form of legal liability (in the case of our research, we will refer to the contravention one).

According to the current regulatory framework in the field, the health care system is based on several principles, one of which is the responsibility of the bodies of medical and health institutions for the accessibility, opportunity, quality and volume of medical and health services, for the quality of professional training and the improvement of the

qualifications of medical and health and pharmaceutical personnel [7].

Moreover, the Republic of Moldova ratified Convention No.342 of 04.11.1950 for the Protection of Human Rights and Fundamental Freedoms on 12 July 1997, where the "protection of health or morals" is among the fundamental components of the right "to respect for private and family life" guaranteed by Article 8 of the Convention. Thus, our country, by ratifying this convention, has legislated the right to quality medical services as a basic component of this right, obliging it to equip itself with an adequate and sufficient legal arsenal to ensure the guarantee of these guarantees.

Likewise, the basic normative act, the Constitution of the Republic of Moldova, obliges the state to ensure the health and well-being of every person and his family, which also includes medical care, which are among the components that protect the right "to social assistance and protection" guaranteed by Article 47 paragraph (1) of the Constitution [2].

Thus, health protection constitutes a constitutional guarantee of every citizen, without discrimination, implemented through the compulsory health insurance system (hereinafter referred to as AOAM), where health services become accessible and guaranteed by the state, but are subject to certain conditions, situations, and responsibilities provided for by law.

This fact is also substantiated in Law No. 1585/1998 on compulsory health insurance, in which Article 1, paragraph (1) states that compulsory health insurance represents an autonomous system guaranteed by the state for financial protection of the population in the field of health care by establishing, on the basis of solidarity principles, from the insurance premiums, funds intended to cover the costs of treating conditions caused by the occurrence of insured events (disease or condition). The compulsory health insurance system offers citizens of the Republic of Moldova equal opportunities in obtaining timely and quality medical care [8].

The Republic of Moldova, being an independent state, a guarantor of this system, is constantly fighting against crime, whether in this area or another, through concrete measures, equally in terms of prevention and coercion, both through the application of criminal and contraventional sanctions. Today's reality shows us that national security cannot be guaranteed only through the application of criminal or contraventional sanctions, moreover, practice shows that, no matter how much these sanctions are tightened, irregular behavior in society, through these measures, cannot be completely excluded.

In this context, the state has developed mechanisms for monitoring, managing and ensuring the transparency of financial means derived from compulsory health insurance funds by medical and pharmaceutical service providers, as well as for holding them liable for contraventions in the event of breach of the obligations assumed.

At the same time, this fight against crime is guided by the contravention or criminal policy, involving specific solutions at the national level. In some countries, contraventions, called "micro-offences", are dealt with within the criminal procedure and attract criminal consequences. In other states, including the Republic of Moldova, these facts are ascertained and resolved exclusively through the contravention procedure, according to the provisions of the Contravention Code (hereinafter referred to as the CC of the Republic of Moldova).

As for the policy to combat contraventions, we can understand a set of legal and contraventional measures legally adopted by the competent state institutions to achieve the purpose of the contravention process, which includes the detection, examination,

resolution and application of the sanction.

Therefore, in order to comply with this policy, as well as to intensify activities to prevent the commission of contraventions, the legislator has conferred on the competent institutions the power to ascertain, examine, resolve and apply sanctions to persons who violate contravention norms. These powers are exercised through the representatives of the law of the public authorities, participants in the contravention process, called ascertaining agents. According to Art.385 paragraph (1) of the Contravention Code of the Republic of Moldova [1], the ascertaining agent is the representative of the public authority that resolves, within the limits of its competence, the contravention case....., respectively paragraph (2) of the same article mentions that the official from the authorities indicated in Art.400–423[10] of the CC, empowered with powers to ascertain the contravention and/or to impose sanctions, is designated as ascertaining agent.

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. In this scientific study we will refer to the resolution of contraventions by the ascertaining agent established according to Art.413 of the Contravention Code of the Republic of Moldova – the "National Health Insurance Company", as follows:

"(1) The contraventions provided for in Art. 266[1] paragraphs (1) and (2) shall be examined by the National Health Insurance Company.

(2) The Director General of the National Health Insurance Company and his deputies are entitled to examine the contraventions provided for in paragraph (1) and to apply sanctions [1].

Art.266[1] of the Contravention Code of the Republic of Moldova is entitled: Violation of the rules for managing and ensuring the transparency of financial means from the funds of compulsory health insurance by providers of medical and pharmaceutical services, and has the following content [1]:

(1) Failure to submit within the deadline established by the contract for the provision of medical assistance (for the provision of medical services) within the framework of compulsory medical assistance insurance, by the contract regarding the release of medicines compensated from the funds of compulsory medical assistance insurance or by the normative acts of the statements, reports and electronic fiscal invoices for the payment of medical services provided to insured persons or their submission with incomplete or erroneous data, shall be sanctioned by a fine of 9 to 12 conventional units applied to the person in a responsible position.

(2) The use by medical and healthcare institutions of financial means from the mandatory health insurance funds contrary to the destination established by the contractual clauses shall be sanctioned with a fine of 60 to 180 conventional units applied to the person in charge.

(2[1]) Failure to publish within the time limit established by the legislation the contracts for the provision of healthcare (for the provision of healthcare services), including the annexes and additional agreements, the contracts for the release of compensated medicines, the decisions of the supreme deliberation and decision-making body (in the part related to the use of financial means related to the contracts for the provision of

healthcare and the contracts for the release of compensated medicines), the report on the use of financial means obtained from the funds of the compulsory healthcare insurance, shall be sanctioned by a fine of 12 to 24 conventional units applied to the person with a responsible position or by a fine of 15 to 30 conventional units applied to the legal entity.

The sanctions applied by the National Health Insurance Company (hereinafter referred to as CNAM) are mainly in the form of fines. The fines applied by CNAM for the commission of contraventions are transferred to the budget of the mandatory health insurance funds.

Thus, the state authority that ensures the organization, development and management of the process of compulsory health care insurance, with the application of admissible procedures and mechanisms for the formation of financial funds intended to cover the costs of treatment and prophylaxis of diseases and conditions, included in the Single Program of Compulsory Health Care Insurance, the control of the quality of medical care provided and the implementation of the regulatory framework related to health care insurance (Art. 9 of Government Decision No. 156/2002), is the CNAM, which represents a subject of interest in correlation with the attributions of combating contraventions.

First of all, we consider it appropriate to specify some details on some historical aspects of the organization and functioning of the CNAM structure.

CNAM is an autonomous state organization, including with national financial autonomy, it was established by Government Decision No. 950/2001 "On the founding of the National Health Insurance Company"[4], for the purpose of implementing Law No. 1585/1998 "On compulsory health insurance"[8] and carries out its activity based on the Statute, approved by Government Decision No. 156/2002 "On the organization and functioning of CNAM" [5].

Since 2004, the Compulsory Health Insurance System (AOAM) has been implemented in the Republic of Moldova, which has allowed the health system to emerge from financial collapse by consolidating financial resources for the provision of health services to the population. Since then, the Compulsory Health Insurance System (AOAM) has become an indispensable financial instrument for the country's health system for its viability [10, p.4].

According to Government Decision No. 156/2002, the mission of the CNAM is to provide a guarantee of financial security and protection to insured persons when accessing quality medical and pharmaceutical services included in the Single Program of Compulsory Health Insurance, by managing the compulsory health insurance system [5, Art.8[1]]. The CNAM is an autonomous state organization, including with national financial autonomy which has legal personality and carries out non-profit activities in the field of compulsory health insurance.

In order to achieve its mission, the CNAM has the following rights [5, Art.11]:

a) to include in the compulsory health insurance system providers of medical and pharmaceutical services by concluding contracts for the provision of medical care (for the provision of medical services) and for the release of medicines and/or medical devices compensated from the compulsory health insurance funds;

a[1]) to develop and participate in the consultation and promotion process of the annual draft law on mandatory health insurance funds;

b) to conclude insurance contracts on any form of insurance in the field of medicine (including voluntary health insurance) and to make payments based on them with legal and natural persons, including foreign ones, in accordance with the legislation in force;

b[1]) to negotiate with medical service providers the offers presented by them for inclusion in the compulsory health insurance system;

b[2]) to negotiate with the suppliers of medicines and medical devices the price of the compensated medicines and/or medical devices and to conclude contracts with them regarding the release of medicines and/or medical devices compensated from the compulsory health insurance funds;

c) to participate in the development/amendment of the Single Program of Compulsory Health Care Insurance and to submit proposals regarding the size of compulsory health care insurance premiums, transfers from the state budget, as well as to grant subsidies;

c[1]) to participate in the development/modification of the contracting criteria for medical and pharmaceutical service providers;

d) to submit proposals regarding the establishment of tariffs for medical services provided within the framework of mandatory health care insurance;

d[1]) to develop proposals regarding the commitment from the budgets/granting to the budgets managed through the Single Treasury Account, on a contractual basis, loans to cover temporary cash gaps of the mandatory health insurance funds maturing in the same budgetary year;

d[2]) to commit from the budgets/to grant to the budgets managed through the Single Treasury Account, on a contractual basis, loans to cover temporary cash gaps of the compulsory health insurance funds with maturity in the same budgetary year, according to the decisions of the board of directors;

f) to open accounts in domestic banks and use them in the legally established manner;

g) to determine the optimal way of completing and recording insurance operations;

j) to file lawsuits against medical and pharmaceutical service providers and/or medical/pharmaceutical personnel in order to compensate for the damages caused to the insured person;

j[1]) to file lawsuits in court against individuals for non-payment of compulsory health insurance premiums and against legal and natural persons responsible for the damage caused to individuals in order to recover the expenses paid from the compulsory health insurance funds for the provision of medical care in the amount provided for by the Single Compulsory Health Insurance Program;

j[2]) to verify compliance by employers with the legislation regarding the inclusion of employed persons in the information related to employment relationships for the establishment of social and medical rights, presented to the State Tax Service;

j[3]) to initiate contravention procedures and apply contravention sanctions to insured persons in case of non-compliance with the legislation on compulsory health insurance;

j[4]) to refund the expenses, documented and justified, incurred by the insured person for medical services that were not provided in accordance with the Contract for the provision of medical assistance (for the provision of medical services) within the framework of compulsory medical assistance insurance, withholding the respective amount from the account of subsequent transfers to the medical service provider that did not honor its contractual obligations;

k) to manage and develop information systems in the fields of activity and ensure their security;

l) to develop instructions and issue provisions related to the regulation of its activity;

m) to develop the draft normative acts necessary for the practical implementation of compulsory health care insurance;

n) to carry out marketing research in the field of medical care and health insurance;

o) to employ insurance specialists and representatives (agents);

p) to organize the selection, hiring, training and performance evaluation of the Company's employees;

q) to collaborate in the field of health insurance with the authorities of other states on the basis of international treaties to which the Republic of Moldova is a party.

If we analyze, Government Decision No.156/2002, point 11 letter j[3]) where it is mentioned about the initiation of contravention proceedings and the application of contravention sanctions to insurance subjects in case of non-compliance with the legislation on compulsory health insurance has recently been amended by Government Decision No.441 of 21.06.2024, which entered into force on 05.07.2024 [6]. Until the entry into force of the new provisions, point 11 letter j[3]) had the following content "to initiate contravention proceedings and to apply, on behalf of the general director of the Company and the deputy general directors, the directors of the territorial agencies and their deputies, contravention sanctions to insurance subjects in case of non-compliance with the legislation on compulsory health insurance".

The amendments are welcome, because the application of the contravention sanction takes place in the name of the law, as specified in Art.32 paragraph (1) of the Contravention Code of the Republic of Moldova and not, as was mentioned before the amendment, in the name of the general director of the Company and the deputy general directors, the directors of territorial agencies and their deputies.

In the same context, we reiterate the provisions of Art.413 paragraph (2) of the Contravention Code of the Republic of Moldova, which expressly sets out the categories of officials within the CNAM who have the right to examine contraventions and apply sanctions within the limits of their competence – the general director of the CNAM and his deputies, the heads of services empowered with control functions and their deputies.

However, the question immediately arises: who is entitled to ascertain these contraventions and conclude reports within the legal framework of this institution's activity? Of course, it is also the CNAM, through civil servants who, within the limits of the powers with control functions they hold, carry out supervision over violations of the rules for managing and ensuring the transparency of financial means from the mandatory health insurance funds by medical and pharmaceutical service providers.

This fact is not expressly indicated in the norm of Article 413 of the Contravention Code of the Republic of Moldova. Therefore, the action of ascertainment should not be confused with that of examining the contravention. According to Article 374 paragraph (2) of the Contravention Code of the Republic of Moldova [1] "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 aim *of ascertaining the contravention*, examining and resolving the contravention case, ascertaining the causes and conditions that contributed to the commission of the contravention".

Thus, as we observe, the legislator notes three phases of the contravention process: ascertainment, examination and resolution of the contravention case (including the application of the contravention sanction). The same regulatory idea is also found in Art.

399 paragraph (2) of the CC [1], where it is mentioned that "The ascertaining agent may ascertain contraventions whose ascertainment, resolution and sanctioning are attributed to the competence of other bodies". The legislator dedicates a separate chapter to a phase of the contravention process, Chapter VI of the Contravention Code, dedicated to the process of ascertaining the contravention act. Respectively, in Art.440 paragraph (1) CC [1], we see what is meant by the finding of a contravention as "the activity, carried out by the ascertaining agent, of collecting and administering evidence regarding the existence of the contravention, the decision regarding the examination of the contravention based on the finding of the ascertaining agent or the report regarding the contravention, of applying the contravention sanction or of sending the file, as the case may be, to the official authorized to examine the contravention case, within the authority to which the ascertaining agent belongs, to the court of law or to another body for resolution".

More recently, the legislator introduced, through Law No.272 of 28.11.2024 [9], a new paragraph to Art. 440 paragraph (1^1) of the Contravention Code of the Republic of Moldova, which specifies how the contraventions are materialized, with the following text: "Contraventions may be ascertained, examined and resolved 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 with the use of a simple electronic signature. The manner of examining and resolving contravention cases in electronic form or by converting the documentation into an easily accessible electronic format, including with the use of a simple electronic signature, shall be approved by the Government".

Therefore, as we can see from the above, the finding of a contravention compared to the examination is something much broader and includes the collection and administration of evidence, the issuance of a decision or report and the application of the contravention sanction or the referral of the file, as the case may be, to the official authorized to examine the contravention case, within the authority of which the ascertaining agent is a member, to the court of law or to another body for resolution, or rather there is a distinction between the terms finding, examination, resolution and sanctioning.

This opinion is also supported by researcher S. Furdui, who describes the finding of a contravention as "that activity carried out by specially authorized bodies to collect and verify the necessary evidence regarding the existence of the contravention, to identify the perpetrators and to establish their liability in order to transmit the materials regarding the contravention case for examination to the body empowered to examine it" [3, p.194].

Therefore, returning to the legal framework and the main rights of CNAM officials to examine contraventions in the field of activity, we note that the legislator granted these officials only the right to examine contraventions and apply sanctions, but not the right to ascertain and conclude reports, which in our opinion is not correct and we consider it appropriate to extend the rights of CNAM public officials who carry out supervision over the violation of the rules for managing and ensuring the transparency of financial means from the mandatory health insurance funds by medical and pharmaceutical service providers.

We believe that the finding of the contravention facts should be identified as the first phase of the contravention process, where the competent state authority in our case CNAM, has the mission of establishing whether the action/inaction committed is or is not a contravention and its classification within a certain substantive norm of contravention law, then successively moving on to the other phases. The finding of the contravention is the preliminary act to the examination of the contravention case and we cannot accept

the formulation in which it is now reproduced Art.413 of the Contravention Code of the Republic of Moldova.

We share the idea of reformulating this article, following the logic of the content as in the case of other ascertaining agents, officials from the authorities indicated for example in Art.403, 404, 405, 406, 406[1], 407 Contravention Code etc., empowered with the powers of ascertaining the contravention and to conclude minutes. In this regard, we consider it appropriate to extend the powers from the provisions of Art.413 CC, regarding the powers of the CNAM, by supplementing Art.413 paragraph (1) with the phrase: "..... *is ascertained and examined by*.....". Also in this context, we recommend that Art.413 be supplemented with a new paragraph which will be paragraph (2) as follows: "*Persons holding control positions within the National Health Insurance Company and within the territorial agencies are entitled to ascertain contraventions and conclude reports*", so as to avoid possible ambiguities and confusions in relation to the material competence of officials in the future.

Moreover, the collection and administration of evidence regarding the existence of the contravention is carried out under the conditions established by Art.425 of the Contravention Code [1], according to which evidence is acquired elements that serve to establish the existence or non-existence of the contravention, to identify the perpetrator, to establish guilt and to know other important circumstances for the fair resolution of the case.

As described above, the current contravention regulatory framework regulates that the CNAM examines the violation of the rules for managing and ensuring the transparency of financial means from the funds of compulsory health insurance by medical and pharmaceutical service providers, but we must specify that the CNAM as a state institution, in its current activity, can commit illegalities, which are classified as a contravention. Thus, Art.266[2] CC, specifies the contravention violation that the CNAM itself can commit, namely the violation of the rules regarding the publication of official information on its official website. The contravention provided for in art. 266[2] Contravention Code of the Republic of Moldova is ascertained and examined by the National Agency for Public Health.

Continuing the series of ideas, for the purposes of this study, according to the statistical information presented by CNAM, in the activity report for 2023 it is mentioned that the volume of other revenues amounted to 184,693.3 thousand lei in 2023, which constitutes 101.7% compared to the annual provisions and 23,178.4 thousand lei or 14.4% more than in 2022. This chapter includes fines and contravention sanctions applied by CNAM [10, p.65]. Respectively, during 2022, other revenues of the mandatory health insurance funds were accumulated in a total amount of 161,514.9 thousand lei, which constitutes 125.0% compared to the annual provisions and 71,714.0 thousand lei or 79.9% more than in 2021. This chapter includes the following revenue categories: fines and contravention sanctions, applied by CNAM and SFS (State Fiscal Service) – 752.0 thousand lei, 348.5 thousand lei more than in 2021 [11, p.54-55].

Conclusion. As mentioned at the beginning of the article, the right to health is a component part of the right to private life. State institutions have implemented a viable system of mandatory health insurance that guarantees each individual access to health services, regardless of their income and social status. It can function normally only if the legal norms that regulate it are respected by all subjects involved in the execution of the respective relations. And in order to discourage their violation and to repair the damage

caused by the violation, subjects in most cases are held liable for misdemeanors.

The role of the ascertaining agent within the competent state authorities, in the case of our study – CNAM, is to carry out and implement all necessary and legal actions to establish the existence of a contravention in the field of competence, including the *ascertainment*, examination, administration of evidence to demonstrate the commission of the respective act and the identification of the person who is guilty, responsible, of committing the contravention. In this regard, CNAM is specialized in supervising violations of the rules for managing and ensuring the transparency of financial means from the mandatory health insurance funds by medical and pharmaceutical service providers, and has decision-making autonomy in matters related to the achievement of its own mission, which consists of ensuring the efficiency of these funds. Any deviation from these norms and social responsibilities must be treated with an immediate coercive reaction from the state, certainly within the framework of a legal process.

The application of contravention sanctions plays an essential role in preventing and combating violations of established norms. The CNAM, like other competent state authorities, must clearly understand its role in preventing and combating acts with a low degree of social danger and, at the same time, identify appropriate mechanisms to ensure the effectiveness of the preventive and repressive purpose pursued by the application of sanctions. It is not enough for the ascertaining agent to ascertain, examine the contravention and draw up the report; it is necessary to make every effort to ensure that the "contraband" understands the seriousness of the act and is discouraged from committing such illegal actions in the future.

Thus, it is found that the national legislation sufficiently describes the powers and rights of the CNAM in exercising the activity of supervising violations of the rules for managing and ensuring the transparency of financial means from the mandatory health insurance funds by medical and pharmaceutical service providers, with *the exception* of the need to reformulate Article 413 of the Contravention Code of the Republic of Moldova, following the logic of the content as in the case of other ascertaining agents, empowered with powers to ascertain the contravention and to conclude minutes. In this regard, we consider it appropriate to extend the powers from the provisions of Article 413 CC, regarding the powers of the CNAM, by completing paragraph (1) with the phrase: "*.....is ascertained and examined by.....*". Also in this context, we recommend that Article 413 be supplemented with a new paragraph which will be paragraph (2) and respectively paragraph (2) will become paragraph (3) as follows: "*The persons holding control positions within the National Health Insurance Company and within the territorial agencies are entitled to ascertain contraventions and conclude reports*", so as to avoid possible ambiguities and confusions in relation to the material competence of the company's officials in the future.

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ILLEGAL WEAPON TURNOVER AS A THREAT TO UKRAINE'S NATIONAL AS WELL AS INTERNATIONAL SECURITY

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Summary

The article reflects on the issue of illegal weapon turnover being a substantial threat to Ukraine's national security as well as the security of the EU Member States. It analyzes the key factors contributing to the spread of illegal weapons all over Ukraine and across the Ukraine's border, including the consequences of armed conflict, corruption risks and insufficient control over arms circulation. International organizations, such as European Union Advisory Mission (EUAM) and the OSCE contribute their efforts to implement the best European practices connected with effective combating illegal arms trafficking. Europol and Interpol engage Ukrainian peers in the investigation of relevant cases, in particular, providing access to their databases.

The study highlights potential threats to public security, the dramatic rise in crime rates, and the risk of terrorist activities. International practices for combating illegal arms trafficking and their possible implementation in Ukraine are reviewed. A set of measures is suggested to strengthen state control, legislative regulation and international cooperation in terms of counteracting the illegal distribution of weapons, firearms and ammunition. To control and prevent illegal weapon turnover not only within Ukrainian borders, but also across European member countries law enforcement agencies of both parties implement a number of initiatives, including the plans developed by the European Multidisciplinary Platform against Criminal Threats (EMPACT), which efficiency reflects in neither case of firearms leakage from Ukraine registered by the State Border Service of Ukraine confirmed by the neighbor countries as well. Additionally, the relevant documents signed between Ukraine and Moldova are mentioned.

Keywords: illegal weapon turnover, national security, armed conflict, arms control, crime rate, terrorism, trafficking in weapons.

Introduction. Illegal weapon turnover is one of the most serious threats to Ukraine's national security. The problem of illegal weapon turnover has become especially urgent after the start of hostilities in the east of the country back in 2014, as well as due to the general increase in the level of crime related to access to unregistered weapons. This led to the spread of weapons among the population, which creates danger both for individual citizens and for society as a whole.

Methods and materials applied. The Constitution of Ukraine stipulates that a person, his/her life and health, honor and dignity, inviolability and security are the highest social values. Every citizen has an inalienable right to life, liberty, personal inviolability

and inviolability of their home. The state is obliged to protect life of every person [3, Art.3, 27, 29, 30].

According to the Law of Ukraine "On the National Security of Ukraine", threats to national security are considered to be phenomena, trends or factors that can prevent the implementation of national interests and the preservation of state values. National interests include vital needs of people, society and the state, ensuring the sovereignty of Ukraine, its democratic development, as well as creating safe conditions for life and well-being of citizens [8, Art.1]. Thus, the illegal weapon turnover significantly undermines safe living conditions and well-being of citizens, putting their lives and health at risk. In this aspect, illegal arms trade is one of the real threats to Ukraine's national security.

This threat is of both current, as right today the illegal weapon turnover creates risks for the national interests of Ukraine, and potential nature. It may deepen in future taking into account the current conditions. There is a possibility of the emergence of new problems caused by the illegal weapon turnover, which may complicate its regulation in future. Without proper control and effective fight against this threat, the situation may lead to further destabilization in the country.

Illegal weapon turnover has a significant impact on security around the world. This is a serious problem not only for the safety of citizens, but also one of the key challenges for law enforcement agencies, especially in the context of their law enforcement activities. Firearms are often used as instruments of violence, including murder, and are widely used by organized criminal groups and gangs, as well as in armed conflicts and terrorist operations.

The most widespread form of illegal weapon turnover is the illegal trade in small arms and handguns. However, the nature of this phenomenon may differ depending on the geographical context, as well as the types of weapons in illegal circulation [13, p.7].

Since February 24, 2022, martial law was imposed in Ukraine, which is in force to the present day [4]. Within the period of 2022, 1 929 crimes were committed with the use of firearms, 242 crimes with cold weapons, 117 with gas and pneumatic weapons, 31 with explosives, and 4 684 crimes with the use of ammunition [6]. Therefore, for the timely seizure of illegal weapons, ammunition or explosives, it is important to conduct constant analysis of such criminal activity.

The analysis of official statistics shows the deterioration of the criminogenic situation in Ukraine. Within the period between January and December 2022, 1 939 firearms, 199 850 cartridges, 1 110 grenades, and 1530.9217 kg of explosives were seized [6]. Such data emphasize the need to strengthen security measures and regular monitoring of the situation to reduce the level of criminal activity.

Therefore, illegal weapon turnover in Ukraine remains a serious threat, especially under the conditions of martial law. The increase in the number of seized weapons and ammunition for the period of 2022 indicates the deterioration of the crime-related situation and the growth of risks to public safety.

Discussions and results obtained. In 2023, Ukrainian law enforcement agencies recorded 4 840 cases of illegal arms, ammunition and explosives trafficking. As a result of operational measures, 5 168 firearms were seized, including 1 567 automatic rifles, 997 pistols and revolvers, 921 grenade launchers, and 1 683 modified weapons. Additionally, the police confiscated a significant amount of explosive materials, namely 17 815 grenades, 16 798 mines, detonators and explosive devices, over 1.8 million rounds of ammunition,

as well as 2 935 kg of explosives. There were 695 documented cases of illegal arms sales, and 117 weapons caches containing over 7 000 units of various weapons were found. The two largest caches were eliminated in Kyiv and the Cherkasy region. Thanks to the work of checkpoints, more than 1 000 attempts to transport illegal weapons were intercepted. In total, 422 firearms were seized, including 234 automatic rifles, 61 pistols and revolvers, 79 grenade launchers, as well as 2 815 grenades and 1 065 mines, detonators and other explosive devices. A total of 3 406 individuals were prosecuted for illegal possession of firearms, ammunition and explosives. In addition, the police in cooperation with the Security Service of Ukraine (SBU) have been taking measures to prevent sabotage [11].

According to Bohdan Drapiatyi, the full-scale invasion has led to a sharp increase in the seizure of illegal weapons. In 2019, law enforcement confiscated around 100 units of automatic weapons, whereas in 2023, this number rocketed to 1 567. The similar trend is observed with grenades: 2 500 were seized in 2019 compared to approximately 18 000 in 2023 [1].

Ivan Vyhivskyi, Head of the National Police of Ukraine, reported that law enforcement officers have seized not only a significant number of firearms, but also over 16 000 grenades, 747 grenade launchers, more than three tons of explosives and nearly two million rounds of ammunition in 2024. Besides, the police launched over 5 000 criminal investigations related to the illegal circulation of firearms and ammunition.

Vyhivskyi reminded that Ukraine has legislation requiring the declaration of firearms, and law enforcement agencies continuously inform citizens on this process. Within the previous year, 2 780 units of illegal firearms were officially registered based on citizen reports. While these weapons are returned to their owners after the war, they must either be surrendered within 90 days or modified (such as converting a Kalashnikov rifle into a carbine capable of firing only single shots) to be legally owned in accordance with current legislation [7].

Ukraine is actively combating the illegal circulation of weapons, which poses a threat to public safety and contributes to crime. Despite the challenges of war, the state maintains control over small arms and counters smuggling.

At the Second National Conference on Combating the Illegal Arms Trade, organized by the OSCE, the EU Advisory Mission (EUAM), and the Ministry of Internal Affairs of Ukraine, law enforcement measures and international cooperation were discussed. Emphasis was placed on the importance of legislative reforms, particularly Bill No.5708, and the establishment of the National Coordination Center and the Unified Firearms Register. These steps contribute to enhanced security and bring Ukraine closer to European standards [5].

Ukraine is in the process of establishing a Coordination Center to combat the illegal circulation of weapons and ammunition. According to Ihor Klymenko, the Minister of Internal Affairs of Ukraine, law enforcement officers seize illegal firearms on a daily basis with an estimated one to five million units in the country.

Ukraine is actively collaborating with the EU to prevent weapons from crossing its borders by sharing data with Europol databases on stolen, lost or withdrawn weapons. The launch of the Coordination Center will be a significant step in strengthening the security of both Ukraine and Europe [12]. Moreover, the Ministry of Internal Affairs of Ukraine closely cooperates with the European Union agencies in terms of this issue to provide security in European member countries. Since Ukraine has been receiving weap-

on from its partners, taking into account experience of the Western Balkans, the primary attention of Ukrainian law enforcement is directed to the control over arms circulation and prevention of its leaking abroad. In addition, law enforcement bodies of Ukraine take active part in the implementation of operative plans developed by the European Multidisciplinary Platform against Criminal Threats (EMPACT); one of the issues is devoted to illegal weapon turnover [10, p.1].

Starting from June 23, 2023, the Unified Register of Weapons (ERZ) has been functioning in Ukraine. It is the functional subsystem of the unified information system of the Ministry of Internal Affairs of Ukraine, designed to automate the accounting of arms circulation processes to the level of standards of operational procedures [9]. This initiative will strengthen the control over arms manufacture, storage, application and registration.

Currently the State Border Service of Ukraine has registered neither case of firearms leakage from Ukraine, which is confirmed by the neighbor countries. However, potential risks demand further developing of collaboration between EU relevant agencies and Ukrainian security bodies [10, p.1]. Illegal weapon turnover and prevention its leakage from Ukraine is one of the key challenges of Ukrainian law enforcements, which make a substantial contribution in performing this significant task. For this purpose a number of relevant documents between Ukraine and the EU member states and neighbor countries have been signed, in particular, with the Republic of Moldova. For instance, back in 2003, Protocol between the State Customs Service of Ukraine and Customs Department of the Republic of Moldova on Cooperation in Terms of Combating Illegal Weapon, Ammunition, Explosives, Narcotic Drugs, Psychotropic Substances and Precursors Turnover has been signed and entered into force. It stipulates the cooperation between parties with the aim of prevention, investigation and suppression of illegal weapon turnover. This collaboration includes exchange of information on suspects (who may be involved in smuggling activities), suspicious vehicles (which may potentially transport firearms and ammunition) and detected cases of illegal weapon turnover [15, Art.3]. Moreover, the parties shall immediately respond to relevant inquiries and provide all available data connected with the issue [15, Art.5].

In addition, the trilateral Agreement between the Cabinet of Ministers of Ukraine, the Government of the Republic of Moldova and the Government of Romania on Cooperation in Terms of Combating Crime has been in force since 1999 (signed; it was approved in Ukraine in 2000, and came into force in Ukraine in 2001). Collaboration spheres include, in particular, combating illegal circulation of weapons, ammunition, explosive and toxic substances as well as radioactive materials [14, Art.1, para 1.3].

Eastern Partnership Integrated Border Management Flagship Initiative: Enhanced Integrated Border Management through Joint Border Control and Exchange of Information along the Moldovan-Ukraine Border can also be mentioned in this context. This project was co-funded by the EU, Ukraine and Moldova to enhance security measures along the borders of Ukraine and the Republic of Moldova as well as to establish advanced technical control over people, transport and items crossing the official borders of the countries in both directions, including 955 km of green border and 267 km of blue border, not only 67 official crossing points [2, p.3].

Conclusion. In order to effectively combat this problem, it is necessary to continue to strengthen control over the illegal circulation of weapons, increase the efficiency of law enforcement agencies, and implement systematic analysis of criminal activities in this

area. It is also important to carry out active preventive work to reduce the risks of the spread of weapons among the population.

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THE CONCEPT OF VICTIMOLOGICAL PREVENTION OF HUMAN TRAFFICKING: THEORETICAL AND PRACTICAL PERSPECTIVES

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Summary

This paper examines the concept of victimological prevention in the context of human traficking, highlighting the paradigmatic shift from a repressive approach to a proactive one, focused on identifying and reducing victim vulnerabilities. The authors argue that the victim is not a passive entity, but an integral part of a criminal dynamic, and prevention must target the psychosocial, economic, and cultural conditions that facilitate exploitation.

The study analyzes the forms of victimization (primary, secondary, latent), the triggering factors, and the stages of the victim recruitment process. Furthermore, it emphasizes the need for early intervention, inter-institutional cooperation, and the adaptation of public policies to include effective protection mechanisms. Victimological prevention is presented not as an alternative, but as a structural element of a coherent policy for combating human trafficking, grounded in scientific knowledge and the protection of human dignity.

Keywords: victimization, vulnerability, trafficking, prevention, victimology, intervention, risk, exploitation, receptivity, resilience.

Introduction. Human trafficking represents one of the most severe forms of transnational crime, producing devastating effects on both individuals and society through the violation of fundamental rights, the degradation of human dignity, and the erosion of social cohesion. In recent decades, alongside the evolution of criminological paradigms from a purely repressive model to a proactive and integrative one, a new sub-system of crime prevention has emerged, victimological prevention. This concept involves directing preventive efforts not exclusively toward the offender, as was the case in traditional approaches, but also toward the potential victim, based on the analysis of conditions, characteristics, and contexts that increase the risk of victimization.

This conceptual shift marks a repositioning of priorities within penal policies, in a context where victim vulnerability has become a determining factor in the emergence and perpetuation of human trafficking. In this light, victimological prevention is no longer a complementary option, but a strategic necessity that entails the early identification of at-risk groups, the strengthening of self-protection capacities, and interinstitutional intervention. The present study aims to conduct a theoretical and practical analysis of this

concept and its relevance within the contemporary criminological landscape, in which victim protection must become a central pillar of prevention-oriented public policy.

Methods and materials applied. The present study was developed through a methodological framework specific to theoretical and applied research in criminal sciences and criminology, with an emphasis on the multidimensional analysis of human trafficking from a victimological perspective. In this regard, the following research methods were employed:

– Firstly, the doctrinal analysis method was used, involving a critical examination of relevant national and international scholarly literature in the fields of criminology, victimology, and criminal law to define the conceptual framework and identify doctrinal trends regarding victimological prevention.

– Secondly, the systemic analysis method was applied to investigate the causal and functional relationships among individual, social, and institutional factors that generate victim vulnerability and facilitate human trafficking. Additionally, the inductive and deductive methods were employed to formulate theoretical generalizations based on case studies presented in official reports (GRETA, UNODC, ANITP, IOM), as well as to structure conclusions within a coherent and policy-applicable framework.

Moreover, the comparative method enabled the correlation of international best practices in TFU prevention with the institutional and normative realities of the Republic of Moldova, highlighting both alignments and discrepancies between victimological intervention standards and their implementation in practice.

The research was further supported by empirical materials, such as impact studies, official statistical data, and institutional analyses published between 2018 and 2024, which contributed to the rigorous substantiation of the scientific argumentation.

Discussions and results obtained. The results of this study highlight that victimological prevention represents an essential tool in the effective fight against human trafficking, as it targets the pre-victimization dimension of the phenomenon, offering a strategic alternative to purely reactive approaches. According to Gh. Gladchi, this type of prevention focuses on victimogenic processes and factors, risk situations, and groups with increased vulnerability, aiming to reduce the risk of victimization and to strengthen individuals' self-protection capacities [10, p.35]. This perspective is shared by V.I. Polubinschi, cited by A.N. Fateev who argues that every crime results from an "intersection" between aggressor and victim, and that identifying and eliminating victim-related traits and conditions may decisively contribute to dismantling the criminal mechanism [7, p.112].

This line of thinking calls for a conceptual reform in penal policies: a shift from reactive repression to anticipatory prevention, including risk prediction, early intervention, and support for vulnerable groups.

In the context of human trafficking, this reform gains particular significance. The offense cannot manifest in the absence of a vulnerable individual, manipulable, recruitable, and transportable, making victim vulnerability a structural condition of the crime. Consequently, victimological prevention must focus on identifying risk factors (such as poverty, lack of education, illegal migration, domestic violence), defining at-risk groups (minors, women, persons with disabilities, etc.), and activating mechanisms of individual and community self-protection (legal education, awareness campaigns, psychological and social support, personal security). This approach is also supported by scholars M.A. Hotcă and S.M. Rădulescu, who argue that the prevention of criminal behavior is insuffi-

cient without also reducing victim vulnerability [13, p.49].

However, the doctrine remains divided. Some scholars, such as N. Mitrofan and E.A. Fattah, contend that victimological prevention should remain subordinate to general crime prevention, serving as a functional complement rather than an autonomous subsystem [18, p.71]. In contrast, authors like T. Butoi and I.V. Soshnikova advocate for a distinct and priority role of victimological prevention, especially in crimes that involve a direct aggressor–victim relationship, such as human trafficking [4, p.117].

A sensitive topic within the doctrinal debate concerns the risk of indirect victim-blaming. Contemporary victimologists emphasize, however, that the purpose of victim research is not to shift responsibility onto the victim, but rather to identify and neutralize systemic, cultural, and psychological risks that make victimization possible. Therefore, victimological prevention must be understood as a balanced and proactive intervention centered on human protection, and not as a means of stigmatizing or marginalizing affected individuals.

A fundamental concept of this paradigm is *victimhood*, defined by V.I. Râbaliskaia as "the heightened capacity or known predisposition of a person to become the victim of a criminal offense" [22, p.204]. This can be classified as:

• *Personal* – determined by psychological traits, lack of education, emotional dependency, psychological trauma, naivety, etc.

• *Situational* – associated with economic vulnerability, absence of social support networks, institutional instability.

• *Professional or social* – as in the case of caregivers, informal workers, or refugees.

Applying the concept of victimhood to the prevention of human trafficking (HT) requires evaluating the vulnerability of potential victims and implementing differentiated measures to reduce risk. This approach demands solid interinstitutional cooperation, as well as the development of a legislative framework that recognizes victimological prevention as a positive obligation of the state.

In the analysis of the human trafficking phenomenon, particular attention must be paid to understanding the process of victimization, since in the vast majority of cases, the victim is not chosen at random but based on a specific victimological receptivity. This involves a combination of psychological, social, cultural, and institutional factors that facilitate exploitation [21, p.87].

According to Beniamin Mendelsohn, the father of modern victimology, "the victim is not merely a passive element of crime, but may display a predisposition to victimization, which varies according to age, gender, culture, and personal experience" [17, p.49]. This victim receptivity becomes essential in HT, where perpetrators exploit not only economic vulnerability, but also the emotional weaknesses and social dependencies of the victim.

For example, in many cases, underage girls from rural areas are lured through false promises of a "better life" or "employment abroad," capitalizing on their lack of critical thinking and risk assessment skills [12, p.133].

Victimization can be analyzed in terms of how it is experienced and reflected upon by the affected individual, as follows:

• *Primary victimization* – the direct suffering of a person who is recruited, transported, and exploited through forced labor, sexual exploitation, or organized begging. Examples include women trafficked for prostitution in Western Europe and minors exploited in agriculture or construction [25, p.219].

• *Secondary victimization* – the psychological, emotional, and social effects on the victim's family: shame, guilt, post-traumatic stress, economic loss. This type is often neglected in public policies [26, p.276].

• *Latent victimization* – invisible or unrecognized forms of exploitation that are not officially recorded. This often occurs in informal sectors such as domestic work, disguised prostitution, or irregular migration.

For instance, the GRETA Report (2020) notes that in Romania and Bulgaria, approximately 40% of forced labor victims do not perceive themselves as victims, but rather as individuals "in debt" to their recruiter, a classic example of latent victimization [11, p.23].

Victimological literature identifies a series of triggering factors for victimization in HT, which must be analyzed in a dynamic interdependence [21, p.102]:

– False promises related to employment, education, or marriage abroad – fraudulent mechanisms based on manipulating the legitimate aspirations of the victim [24, p.41].

– Emotional and coercive manipulation – frequently observed in "*lover boy*" schemes or networks involving affective and psychological dependency, including through *debt bondage* [15, p.209].

– Lack of trust in authorities – caused by corruption, previous failures of justice, systemic discrimination; this prevents victims from reporting abuse or seeking assistance [3, p.67].

Social stigmatization – particularly of victims of sexual trafficking, who are often marginalized and blamed, including by their families or communities, exacerbating trauma and hindering reintegration [27, p.121].

A telling example is the situation in the Republic of Moldova: according to a report published by La Strada (2022), 63% of identified victims did not seek help from the authorities due to social shame and fear of rejection by their home communities [5, p.5].

Victimization in human trafficking is not an isolated act but a complex and gradual process, typically unfolding in the following stages:

Identification of the vulnerable victim. This is the first critical stage in the dynamics of human trafficking, as it involves the deliberate selection of individuals who, due to a combination of psychosocial and contextual factors, are particularly susceptible to manipulation and exploitation. This process often occurs through informal social observation, carried out by recruiters who operate in accessible environments such as educational institutions, online platforms, or disadvantaged communities. In schools, vulnerability may be indicated by signs of emotional neglect, lack of familial support, or social exclusion. Online, traffickers target profiles showing signs of emotional fragility, isolation, or distrust of authority. In poor communities, recruitment is facilitated by the absence of economic and educational opportunities. This identification is far from random, it is a sophisticated mechanism based on recognizing victimological predisposition, highlighting the urgent need for early intervention by community and institutional actors.

Building trust. This stage is essential in the recruitment process, whereby the trafficker seeks to create a seemingly genuine relationship based on empathy and assistance. It is characterized by emotional manipulation techniques tailored to the victim's psychological profile: promises of a "better life," offers of honest work abroad, material aid, or romantic involvement (as in the "lover boy" method). Through these tactics, the victim develops emotional attachment and trust toward the recruiter, severely impairing their critical thinking and defensive instincts. This induced trust is particularly dangerous, be-

cause it distorts reality, presenting the trafficker as a false "savior." Thus, trust-building becomes a subtle psychological weapon through which the victim not only accepts the offender's presence but often unknowingly cooperates in their own victimization.

Severing social ties. This is a strategic stage aimed at isolating the victim and ensuring total control. Once trust is established, traffickers work to gradually cut the victim off from family, friends, educators, or any other support network. Isolation is achieved through emotional manipulation (convincing the victim they are misunderstood or judged), veiled threats, or relocation – often to another region or country. Separated from their support system, the victim becomes emotionally and materially dependent on the exploiter, facilitating continuous abuse. The severing of social ties also removes any chance of community intervention, thereby increasing vulnerability and reinforcing the victim's silence. Without institutional mechanisms for monitoring and reporting, this stage is pivotal in securing the victim's complete integration into the trafficking system.

Exploitation. Exploitation is the peak of the victimization process in human trafficking, representing the moment when the trafficker achieves full control over the victim, who is subjected to serious and systematic abuse. At this point, the victim loses all decision-making power, and their physical, psychological, and legal autonomy is profoundly compromised. Exploitation manifests in multiple forms: forced labor in degrading conditions without pay; sexual exploitation, including organized prostitution; forced begging, especially in the case of minors or persons with disabilities; and organ trafficking, one of the most severe and hidden forms of abuse. These activities are carried out under coercion, threats, physical or psychological violence, and are maintained through fear, humiliation, and lack of alternatives. Exploitation is not only a consequence of preexisting vulnerability but also a source of deep trauma and re-victimization, with long-term effects on the victim's identity and personal integrity.

Silence [2, p.58]. Silence represents a structural and final component of the victimization process in human trafficking, functioning not only as a defensive reaction by the victim, but also as a strategic instrument of control employed by exploiters. This silence is maintained through a combination of persistent fear, of violence, retaliation, denunciation, or deportation, and deep internalized feelings of shame, which block the victim's ability to seek help. In parallel, the real or perceived lack of alternatives, employment, shelter, family support, keeps the individual in a state of total dependence, whether economic, emotional, or psychological. Silence thus becomes both a survival mechanism and a major barrier to the intervention of authorities and support services. In the absence of proactive institutional strategies for victim identification and trust-building within support systems, this silence risks perpetuating abuse and normalizing exploitation within societal indifference.

This mechanism is reflected in the victimological literature through the theory of victimization spirals (Fattah, 1991), which describes how a minor initial vulnerability can evolve, under external pressures, into an irreversible process of total control over the victim [8, p.95].

Women and adolescent girls are predominantly subjected to sexual exploitation, while men are more frequently exploited through forced labor. Minor victims are often recruited online via social media platforms, exhibiting a profile of hyper-vulnerability, emotional, educational, and familial.

The analysis of the forms, factors, and mechanisms of victimization in human traf-

ficking shows that any effective anti-trafficking strategy must include, alongside repression and post-factum assistance, preventive measures aimed at reducing vulnerability, based on psychosocial understanding of the victim and early intervention. This constitutes the logical and scientific foundation of authentic victimological prevention [25, p.219].

In the context of modern approaches to human trafficking, victimological prevention becomes not merely a complementary component of anti-trafficking policy, but a strategic necessity in anticipating victimization phenomena. Whereas, until recently, prevention strategies focused almost exclusively on repressive actions and the dismantling of criminal networks, today there is an acute need for a shift toward the vulnerable individual, especially during the pre-victimization stage, where the potential for victim receptivity emerges in insidious yet predictable ways [12, p.133].

The specialized literature emphasizes that, in the absence of active measures to reduce social and personal vulnerability, criminal policy loses effectiveness, operating within a reactive and delayed framework. True prevention, as S.M. Rădulescu asserts, should begin before the victim is recruited, transported, and exploited, through actions targeted at risk groups, unstable family environments, disadvantaged communities, and deficient educational structures [21, p.164].

In this regard, victimological prevention implies active involvement from both the state and society in strengthening individuals' self-protection capacities, especially for those in precarious conditions, as well as in establishing institutional mechanisms for the early identification of individuals at risk of becoming victims [16, p.49].

International experience has demonstrated that prevention efforts are truly effective only when they include educational campaigns tailored to the comprehension level of vulnerable groups, professional training for first-contact actors, such as police officers, social workers, or medical staff, and the promotion of a culture of social vigilance through community involvement in the detection and discouragement of recruitment [27, p.67].

In Romania, for instance, the campaign "Be Free!", implemented in educational units located in high-risk areas, employed participatory methods designed to raise awareness about the dangers of online recruitment through social media [6, p.5]. In the Netherlands, the CoMensha network provides a functional example of partnership between the public sector and non-governmental organizations, within a referral and protection system based on victim risk assessment [6, p.41].

Despite these good practice examples, many current policies, including in the Republic of Moldova, remain anchored in a punitive vision, ignoring the fact that the lack of civic education, mental health services, or local development intervention creates the conditions for the perpetuation of victimization [23, p.118].

Therefore, it is necessary to reformulate both criminal and social policies so that prevention is no longer understood merely as law enforcement but as a complex anticipatory process with impact across multiple spheres of social life. Education, especially for minors, must become a platform for legal and moral literacy regarding the dangers of trafficking. The healthcare system, in turn, should ensure access to psychological counseling for traumatized or marginalized individuals, while social services must engage in proactive activities within communities chronically exposed to vulnerability.

A positive example in this regard is the "Bright Future" program, implemented in the autonomous region of Gagauzia, which combined economic support with youth training in safe migration and human rights [14, p.13]. Likewise, reintegration projects run by the

International Organization for Migration (IOM) in the Republic of Moldova have shown that counseling and professional rehabilitation for victims can significantly reduce the risk of re-victimization [19, p.26].

From a victimological perspective, these interventions are not auxiliary elements in combating human trafficking, but essential components of coherent public policy. The state cannot remain passive in the face of latent victimization or systemic vulnerability processes. A clear normative framework is needed to recognize victimological prevention as a state obligation, with measurable performance indicators, adequate funding, and interinstitutional coordination [20, p.73].

At the same time, an integrated system for the early identification of potential victims must be established, based on analyzing the social, economic, and psychological context in which they live.

Therefore, the victimological dimension of prevention policies implies a shift from reaction to anticipation, from isolated intervention to strategic planning, and individual protection to social cohesion. It is a form of preventive justice, oriented not toward punishment, but toward the avoidance of human suffering, beyond statistics and official reports [8, p.98].

Conclusions. The victimological approach to human trafficking, as developed through the theoretical and practical reflections in this paper, emerges as an indispensable dimension of modern prevention strategies. Beyond its complementary role to traditional punitive interventions, victimological prevention acquires autonomous and foundational significance, centered on anticipating victimization risk and reducing the vulnerability of those exposed to exploitation.

Human trafficking cannot be fully understood solely through the lens of criminal mechanisms, but must be interpreted as an expression of systemic social imbalances, institutional deficiencies, and victim receptivity amplified by psychological, cultural, and economic factors. In this context, the concept of victimological prevention asserts itself as an emergent subsystem within public safety policy, placing the victim at the center, not as a passive subject, but as a dynamic element in the criminogenic equation.

The study of the forms, factors, and mechanisms of victimization reveals the deliberate and targeted nature of recruitment processes, where victims of trafficking are rarely chosen at random. For this reason, the effectiveness of combating the phenomenon depends fundamentally on the institutional capacity to intervene during the pre-victimization phase, where receptivity is still detectable and reversible.

Reconsidering the logic of institutional intervention from repression to protection, from reaction to prevention, from enforcement to the reinforcement of social resilience, constitutes one of the most pressing challenges for contemporary criminal policy. International best practices confirm that where early identification mechanisms, preventive education, and community partnerships have been implemented, the incidence of human trafficking cases has significantly decreased.

In this regard, integrating the victimological dimension into national policies requires not only regulatory adjustments, but also the professionalization of interventions, the allocation of sustainable resources, and the development of an institutional culture oriented toward the protection of human dignity. Strengthening scientific research in the field of victimology and translating its findings into coherent public policies with real social impact are essential pillars of a strategic vision for effectively

combating human trafficking.

In conclusion, the concept of victimological prevention, analyzed through both theoretical and practical lenses, becomes an indispensable interpretative and operational key for understanding and effectively combating human trafficking in contemporary societies. In a constantly evolving criminological landscape, where recruitment methods grow more sophisticated and forms of exploitation adapt to new socio-digital realities, the development of a prevention culture centered on the human being and their fundamental rights is no longer merely a matter of public policy choice, but a moral, legal, and strategic obligation for any democratic state.

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METHODOLOGICAL ASPECTS OF INVESTIGATING CRIMES COMMITTED BY INDIVIDUALS WITH DRUG ADDICTION

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Summary

The article provides a comprehensive analysis of the dimension of crimes committed by drug-dependent individuals in the Republic of Moldova. It presents current statistical data, typologies of committed offenses, behavioral aspects of drug users, as well as tactical recommendations for criminal investigation officers. The text addresses the importance of medico-legal examination, specialized forensic expertise, and conducting interviews adapted to the psychological characteristics of persons with drug dependence.

Keywords: drug addiction, interview, injection marks, criminal behavior, forensic science, medico-legal expertise, criminal investigation, investigative tactics, drug use.

Introduction. In recent decades, the Republic of Moldova has undergone a period marked by profound economic, social, and political transformations which, alongside the positive effects of transition, have also generated a series of major challenges in the area of public security. One of the most serious emerging threats is the expansion of drug-related crime, including both consumption and trafficking. This issue can no longer be addressed solely from a legal or punitive perspective, as it involves complex dimensions – social, medical, psychological, and criminological in nature.

The evolution of criminality in Moldova is characterized by a process of adaptation and increasing sophistication of criminal behavior, including in the case of groups involved in the trafficking of illegal substances. These groups develop, specialize, and interact with transnational networks, thereby increasing risks and challenges for law enforcement institutions. At the same time, drug users are becoming increasingly involved in the criminal chain – not only as consumers but also as intermediaries or occasional dealers, driven by the urgent need to obtain their required doses.

Statistical data show that in recent years there has been an increase in the number of drug-related crimes and misdemeanors, a phenomenon also marked by significant underreporting due to users' fear of being included in official registries and the associated

social stigma. In parallel, there is a clear link observed between the use of psychoactive substances and other forms of criminal activity, such as theft, violence, or offenses against public health.

Discussions and results obtained. Starting from the premise that addiction directly influences criminal conduct, this paper focuses on the distinctive features of criminal investigations in cases involving the consumption of narcotic substances. The aforementioned transformations have led to a series of complex effects, including negative consequences felt at the level of public safety. These include an increase in certain types of crimes, a qualitative shift in the structure of criminality, and the refinement of criminal organization and technical means used in illicit activities [1].

A distinct phenomenon is the consolidation of criminal groups, the integration of economic crime with conventional crime, and their specialization in various areas of criminal activity [2, p.34-48]. In this context, drug-related crime – both trafficking and consumption – is undergoing rapid expansion, becoming one of the most dynamic and dangerous forms of social deviance [3].

According to available official data, drug-related offenses in the Republic of Moldova have shown a slight increase in recent years, while the use of psychoactive substances continues to pose a significant public health issue. In 2024, authorities in the Republic of Moldova recorded 1033 drug-related crimes, an increase of 74 cases compared to the previous year. Additionally, 4310 drug-related misdemeanors were registered, 900 more than in 2023. According to data from the National Bureau of Statistics, in 2023 4.2% of all individuals convicted at first instance were sentenced for drug-related offenses [4].

At the end of 2023 the total number of officially registered drug users in the Republic of Moldova was 12032 individuals [5]. During the same year, 612 new cases of drug users were added to the national drug user registry. It is important to note that these figures reflect only officially recorded cases. According to some estimates, over 70% of drug users in Moldova have never sought help from the country's medical institutions, largely due to the fear of being registered at the Republican Narcology Dispensary – a situation that may lead to social stigma and various restrictions [6].

In the Republic of Moldova, official data do not provide an exact statistic regarding the number of offenses committed by drug users. Although there are no official figures indicating precisely how many crimes are committed directly by individuals who use drugs, various international studies and local observations reveal a clear link between the use of psychoactive substances and criminal behavior. Regular drug use can significantly impair an individual's ability to make rational decisions, follow social norms, and maintain functional relationships with family or the community. In many cases, addiction creates a constant pressure on the individual to obtain resources to support their drug use, which may lead to the commission of property-related crimes such as home burglaries, car break-ins, fraud, or even robberies and muggings.

In 2023, among individuals aged 14 to 29 who committed offenses, nearly one in four committed thefts (28.0%), 8.6% were involved in acts of hooliganism, and 6.9% committed drug-related offenses. Out of every 10000 young people aged 14 to 29, there were 110 individuals who committed crimes [7].

In the Republic of Moldova, the phenomenon of drug addiction became a serious issue with the onset of the drug use epidemic in 1985. At the beginning of the epidemic, the number of individuals affected doubled every two years overall, and every two years

among adolescents specifically [8, pp.365-373]. In recent years, this trend has accelerated significantly, with the number of affected individuals now doubling annually—an indication of delayed and incomplete detection.

Today, drug addiction can no longer be seen merely as a problem of deviant behavior or as an individual dependency with psychophysiological roots. It must be approached as a phenomenon with deep social and demographic implications, with the potential to erode social cohesion, contribute to the degradation of human capital, and, in the long term, increase the vulnerability of society as a whole [9, p.55-66].

Public health and criminology experts emphasize that the issue is not merely a criminal one, but also deeply social and medical in nature. The lack of access to effective rehabilitation services, the stigmatization of individuals with addiction, and their official registration in special medical records (which may result in the loss of certain rights) lead many drug users to avoid the healthcare system and remain outside any form of institutional support. This social exclusion further increases their vulnerability and the risk of involvement in illegal activities.

Moreover, drug use is often associated with other types of offenses, such as domestic violence, driving under the influence of psychoactive substances, or participation in drug trafficking networks. As such, the user becomes not only a potential perpetrator of crime, but also a victim of their own addictive behavior and of a system insufficiently equipped to address the complex nature of this problem.

The indisputable motive – present in 95% of thefts and assaults committed with the intention of stealing property – behind the overwhelming majority of offenses committed by individuals with drug addiction is the need to obtain drugs or the means to purchase them [10, p.22].

The severity of this phenomenon is also recognized at the international level. The United Nations places the drug problem in the same category of global threats as the risk of nuclear conflict or the danger of an ecological catastrophe, highlighting the existential nature of these risks for the future of humanity [11].

Given the complexity and gravity of criminal behavior associated with drug consumption, a rigorous and specialized approach to investigating such offenses becomes essential. Methodological and forensic aspects gain major importance in the process of identifying and proving crimes committed by drug users, taking into account their specific behavioral and psychological characteristics. In order to enhance the efficiency of criminal investigation bodies, it is necessary to develop forensic methodologies that are adapted to the particularities of offenses arising from drug dependence, as well as to foster effective interdisciplinary collaboration among forensic experts, public health professionals, psychologists, forensic psychiatrists, and medical examiners.

The following sections will analyze certain methodological particularities in the investigation of crimes committed by drug users, highlighting practical challenges and providing recommendations for optimizing criminal investigations in this sensitive and dynamic area.

A necessary condition for successfully developing a specialized methodology for investigating offenses committed by individuals with drug dependence is to consider the specific traits of the offender, including signs of a particular form of addiction. These factors characterize the personality of the offender, their behavior, motivation, choice of method used in committing the crime, and other distinctive features. For instance,

the actions of a person dependent on drugs during and after committing a crime may be irrational, such as unjustified changes in the arrangement of objects at the crime scene. There are documented cases where drug-dependent individuals left behind personal items, tools used in the offense, or drugs and drug traces at the scene [12, p.46]. Thus, in the investigation of crimes committed by drug users, it becomes reasonable to analyze relevant forensic information concerning the nature and types of offenses committed by such individuals. Particular attention should be paid to the fact that the main objective of a drug-dependent offender is to satisfy the urge to consume drugs or to obtain the necessary means to do so. It is logical to assume and identify a correlation between the type of addiction and the nature of the offense committed. Certain crimes, such as those related to economic activities, are generally not characteristic of individuals suffering from drug dependence. This consideration should be factored into the development of investigative hypotheses and the planning of the criminal investigation.

Drug dependence influences both the offender's behavior and the choice of offense, which constitutes a common and distinctive feature. Offenses committed by drug addicts are classified in the legal literature according to various criteria. However, authors differ in their opinions on this matter [13, p.63].

Based on the analysis of judicial practice materials, we draw attention to the following groups of offenses (classified according to the method of commission):

Offenses related to drug trafficking. In these cases, drugs serve as the object or means of the criminal act. This category includes operations such as purchasing, producing, sending, or cultivating prohibited plants. Drug addicts initially obtain drugs for personal use, but inevitably come into contact with traffickers, developing both financial and psychological dependence on them. When they run out of money, they acquire drugs "on credit" and are subsequently forced to sell to others, transitioning from mere consumers to small-scale traffickers.

Offenses committed to obtain drugs or money to buy them. These are typically offenses against material property, including theft, robbery, mugging, and extortion. This group also includes specific acts such as stealing drugs or blackmailing individuals known to hide drugs in specific locations and stealing those meant for clandestine sales. Due to increasing drug tolerance, addicts require larger doses but, lacking income, resort to criminal acts. For them, money is no longer an end in itself but merely a means to acquire drugs.

Violent offenses committed under the influence of drugs, such as murder, bodily harm, rape, and others. In states of euphoria or withdrawal, addicts can become extremely aggressive. Those under the influence of hallucinogens lose touch with reality and may display suicidal or violent behaviors. Analysis shows that these offenses are often particularly brutal and, in some cases, committed by groups. Moreover, some drugs have sexually stimulating effects, which may explain certain instances of sexual assault.

Transmission of venereal diseases, including HIV/AIDS. Drug addicts are a key factor in the spread of HIV, primarily through shared needle use or sexual contact. It is estimated that a single drug addict can infect up to 120 people in one year.

Offenses against the health of minors. These include involving minors in criminal or misdemeanor activities. Lacking financial resources, some addicts recruit young people into drug use as a means to secure their own doses. Youth are especially vulnerable due to curiosity, a desire to belong to adult groups, and lack of experience. Their bodies also

become addicted more quickly, and in a short time, they begin committing thefts or other crimes [10, p.75].

The typology of offenses committed by individuals with drug dependence, structured according to motivation, behavior, and the object of criminal activity, reflects a distinct criminological profile – one situated at the intersection of personal vulnerability and heightened social danger. This observation is not merely theoretical; rather, it directly influences the selection of appropriate tactical means and methods for the effective investigation of such offenses. Understanding the behavioral and criminogenic particularities of drug-dependent individuals enables not only the classification of offenses, but also the development of forensic tactics tailored to this category of offenders. For example, the impulsive, chaotic, and unpredictable behavior often exhibited by drug addicts requires heightened attention from the criminal investigation officer during the initial phase of the investigation, particularly when examining the crime scene and collecting physical evidence.

Given the complexity of criminal manifestations associated with drug use, it is essential to move from a descriptive approach to a tactical-procedural one, focused on evidentiary efficiency. In this context, the most relevant tactical aspects of criminal investigation in such cases are outlined below.

One of the most important initial procedural actions in the investigation of offenses committed by drug-dependent individuals – an action that significantly determines the scope and sequence of subsequent activities – is the crime scene investigation [14, p.207-213]. This activity must be carried out in accordance with the provisions of the Criminal Procedure Code of the Republic of Moldova and established methodologies for investigating crimes such as theft, robbery, mugging, homicide, or drug trafficking. However, in cases involving drug addicts, the crime scene investigation takes on a specific character due to the presence of traces and objects that clearly indicate behavior associated with drug use. During the preparation of the crime scene investigation, the criminal investigation officer must establish a set of objectives that allow for the formulation of concrete hypotheses regarding the perpetrator's identity. These include: searching for biological and physical traces – fingerprints, shoe prints, vomit, saliva, urine, blood; lingering odors – the preliminary analysis of which may indicate that the act was committed by a person under the influence of drugs; searching for drug-specific traces such as vials, syringes, needles, improvised instruments, medical prescriptions, or pharmaceutical packaging; and assessing the overall situation at the scene and identifying significant environmental changes (apparent chaos, overturned furniture, scattered objects), all of which suggest the typical behavior of a person under narcotic intoxication.

Even during the static phase of the crime scene investigation, the criminal investigation officer must pay special attention to object-traces, as they may contain residual substances such as particles of opium, hashish, poppy powder, or traces of liquid or solid extracts from narcotic plants. Due to the small size of these traces, their identification must be guided by the context of the offense. For instance, in cases involving violent crimes, substance-traces are often found on drug paraphernalia such as syringes, small bottles, cotton or gauze pads, and cigarette butts. A cigarette butt containing traces of cannabis, for example, may indicate joint use by both the victim and the suspect. During the investigation, the officer must instruct the specialist to collect swabs from the victim's hands, oral cavity, samples from under the nails and nail clippings, as well as particles

from clothing seams and pockets. These will later be analyzed during chemical forensic examinations to identify narcotic substances.

In cases involving drug thefts from medical institutions or storage facilities, the stolen drugs may be stored or transferred using specific containers – cabinets, safes, jars, packages, bags, or boxes. Additionally, improvised processing tools such as grinders, sieves, or scales may also be identified. Relevant traces can also be found on seemingly "abandoned" objects, indicating drug use directly at the scene. A common mistake made by investigative bodies is to limit the search to the room where the crime was committed. However, practice has shown that it is often necessary to extend the perimeter of the search, especially when traces may appear along the perpetrator's route of movement.

Discovered objects must be examined thoroughly for fingerprints and drug residues, described in detail in the official crime scene report, and collected either in their entirety or using techniques recommended by forensic specialists [15, p.50-61].

The investigation of offenses in the category under discussion highlights the necessity of combining a body search with a physical examination of the detained person. Grounds for conducting such an examination in these types of cases should be based on information indicating the individual's use of narcotic substances. Performing the examination shortly after detention is reasonable, in order to determine the presence of injection marks on the suspect's body and to assess their age. This allows the criminal investigation officer to be aware from the very beginning of the investigation that the person is a drug user.

Failure to conduct a timely examination to identify injection marks may result in the loss of critical evidence. In particular, in cases of narcotic use, any area of the body with visible veins may be used for injection, but such marks may disappear if different areas are used or if the injections are administered professionally. As a result, after one or two weeks, the injection marks may no longer be detectable. Additionally, if injection marks are not documented at the outset and their origin is not clarified, various interpretations may later arise regarding how they appeared on the body.

One of the specific features of intravenous and intramuscular drug administration is that some individuals who have used narcotics for a short period inject themselves not intravenously but subcutaneously or intramuscularly, using any accessible site. Medical personnel do not administer medication in such areas, except in cases where a person is in a long-term critical condition and has received a large number of injections – such situations are clearly recorded in medical documentation. Therefore, conducting a physical examination at the moment of detention is both necessary and mandatory.

The examination must be carried out by a person of the same sex as the detainee and in the presence of a specialist who can provide a professional opinion regarding the presence of skin lesions and the approximate time of their appearance.

In the event that skin redness is detected, the specialist assists in describing its characteristics, identifying the possible substance that caused it, and collecting samples. When describing injection sites, for example on the thigh, the general condition of the veins is noted, along with the likelihood that the marks may have resulted from medical procedures. Typically, different types of drugs cause varying skin reactions [16, p.5].

Given that the subject of the examination is a living person, it must be noted that it shall be carried out either with the person's consent or based on a reasoned order by the criminal investigation body, with the authorization of the investigating judge, in order to

establish whether there are signs of a crime or distinctive marks on their body, in cases where a forensic medical examination is not required [17].

When deciding on the ordering of a biological forensic examination, the criminal investigation officer in the initial stage of the criminal investigation must decide on the collection of samples from the suspect's fingers and subungual content. These samples must be sent for forensic examination to determine the presence of opiate alkaloids or cannabinoids on the suspect's fingers. When collecting the samples, it must be explicitly stated what is being collected—samples from hands, neck, etc. Each sample is to be packaged separately [10, p.77].

If a person is holding drugs, transporting them, or, more seriously, producing them, then due to the general property of objects to retain traces, there will be traces of substances on their body and clothes. Therefore, conducting a forensic examination to detect such traces is absolutely necessary. However, such examinations are rarely found in case files.

The criminal investigation officer may not examine a person of the opposite sex if such examination requires undressing. In these cases, the criminal investigation officer delegates the direct physical examination of the body to a doctor or another specialist trained in medicine, while retaining overall responsibility for the procedural action. If necessary, the specialist may be heard in connection with how the examination was conducted and its findings, but only within the criminal investigation phase. The need to involve a specialist in a procedural action arises when the criminal investigation officer, during evidence collection, analysis, or when using technical means, requires specialized knowledge. For the examination of a person's body, a medical specialist is needed to ensure the possibility of detecting, documenting, and collecting traces (objects) of the offense found on the person's body. Medical participation is also required in cases where technical means must be used or simple medical procedures must be performed (e.g., examination of body cavities to detect the presence of drugs inside).

To prove that the detained person was involved in drug-related operations, it is crucial to collect samples for analysis: swabs from the hands (using alcohol or a hydroalcoholic solution), nail clippings (to prove contact with drugs), swabs from the lips and mouth, and samples of biological fluids (blood, urine, saliva) in order to determine drug use.

Collected samples must be packaged and sealed separately. The control sample of the material used for swabbing (e.g., gauze soaked in hydroalcoholic solution) must also be packaged separately. Depending on the nature of the committed offense and the surrounding circumstances, the criminal investigation officer may assume that the suspect's body and clothing bear traces resulting from contact with various objects at the crime scene (during the overcoming of obstacles), as well as traces from the victim's body and clothing. Because drug-dependent individuals often neglect their appearance, such traces can persist for a longer period. Therefore, during the examination process, drug users may show particles from forced obstacles, injuries to the body and clothes, foreign hairs, bite marks, nail scratches, etc. Successfully achieving these goals involves a logical sequence of actions, including: examination of the suspect's clothing and exposed body areas; analysis and comparison of traces on the clothing and body; identification of specific traces of the offense.

A key role in investigating crimes committed by drug addicts is played by the in-

terview of the victim and witnesses. Without delving into the tactics of interviewing, we will highlight only the specific aspects of conducting interviews in this category of cases. During the victim's interview, the investigator must establish gender, age, social status, family situation, the victim's behavior (before, during, and after the offense), any medical conditions (alcoholism, drug addiction, mental disorders), character references, criminal history, and relationship with the perpetrator. After identifying the features defining the victim's personality and behavior, connections with other individuals, and other elements of the criminal mechanism, it becomes possible to formulate typical versions, for example, regarding motives or the subject of the offense. The gathered information may serve as the basis for probabilistic conclusions about the criminal event and may also be useful in further procedural actions such as confrontations and follow-up interviews.

In the interest of criminal investigation, the first witnesses to be identified and interviewed should be: eyewitnesses to the crime; individuals who observed suspicious persons near the scene; relatives, friends, co-workers, and neighbors of the victim who are familiar with their lifestyle, connections, and conflicts; individuals who saw the victim shortly before the incident and can indicate where they were going and with whom; and those who found the victim in a serious or deceased condition.

A special place is occupied by the interview of the drug-addicted suspect. Typically, this individual appears at the initial stage of the investigation when the criminal investigation officer does not yet have sufficient information about their involvement in the crime or their personal background. The difficulties of the initial interview are also due to the suspect's condition: whether at the time of the interview they are under the influence of narcotics (euphoria) or, conversely, in withdrawal. When the suspect is euphoric, the interview is not feasible. It is necessary to consider the particularities of drug intoxication depending on the type and stage of addiction. For novice or tolerant addicts, euphoria lasts briefly from a few minutes to several hours, depending on the drug and the psychophysiological traits of the individual. The interview must begin immediately after the euphoria subsides. For chronic and active drug users, euphoria is inevitably followed by withdrawal, which persists until a new dose is administered.

After identifying signs of drug intoxication, the criminal investigation officer must decide: to postpone the interview and request the examination of the suspect by a specialist (addiction doctor or psychiatrist). The specialist will assess the individual and issue a preliminary opinion on their condition, indicating when the interview can be conducted.

Nevertheless, there are cases when the suspect's condition is not clearly established, and the interview proceeds. When the suspect is in severe withdrawal – a common situation for addicts in advanced stages – conducting the interview is, in our opinion, inadmissible. The suspect's thoughts and behavior are driven solely by the urgent need to obtain drugs. Some argue that, if necessary, a dose of the drug may be administered to a person in withdrawal, and the interview could begin after they return to a normal state. The administration must be documented in the interview report. We disagree with such practice, as drug administration leads back to euphoria, followed by another withdrawal phase, creating a vicious cycle. If the dose does not match the usual norm, the withdrawal symptoms may worsen. In such a case, the person must be isolated in a medical facility. The inadequate condition may lead to contradictory statements, memory lapses, and conscious distortion of facts.

Law enforcement officers often encounter drug-addicted suspects who exhibit mild

withdrawal symptoms. Such individuals tend to be cooperative, retain cognitive function, and are capable of critically assessing the questions asked and providing objective answers.

As with any suspect, the interview of a drug-dependent individual should begin with the establishment of psychological rapport. In this regard, it is useful for the criminal investigation officer to be familiar with drug addiction as a serious illness, the dynamics of relationships among members of drug-using groups, and the suspect's connections with family, acquaintances, and other members of the community. The personal, professional, and social qualities of the officer also play an important role. In most cases, drug users are aware of the harm caused by their addiction. The officer's tone should be calm, even, and devoid of emotional or accusatory inflection. Sometimes, a preliminary conversation is held in the presence of a drug enforcement officer to demonstrate the extent of law enforcement's knowledge about the suspect's criminal activity. The involvement of a specialist (psychiatrist or narcologist) in the suspect's interview is a subject of debate. The question arises whether the presence of such a specialist facilitates the establishment of contact with the suspect [18, p.26-31].

The tactics used during the interview of a drug addict depend on the nature of the procedural situation – whether it is conflictual or non-conflictual. To establish an effective psychological connection, the criminal investigation officer must gather the following information about the suspect: reasons for drug use, the circumstances under which the use began, age of first use, preferred substance, level of dependency, family situation and living conditions, environment at work or school, peer group, role in informal networks, and positive traits (e.g., interests or hobbies).

The suspect's identity is verified based on identification data, criminal records, and other special registers.

Once psychological contact has been established, the drug addict may be given the opportunity to freely recount the facts. Subsequently, the criminal investigation officer must thoroughly detail the suspect's statements. In some individuals who were under the influence of drugs at the time of the incident, perception of time and space may be distorted. Withdrawal reduces focus, and cannabis intoxication can lead to severe difficulties in recalling events that occurred just minutes earlier [19, p.73]. It is important to note that spatial perception, object shape, and colors are severely distorted in drug addicts who commit crimes under the influence of narcotics. Auditory or visual hallucinations may occur. Memory capacity is impaired, as is psychological stability. Temporary amnesia may occur, or real memories may be replaced with similar but false ones. In cases of long-term drug use, intellectual degradation is observed – manifested through misunderstanding of questions and unintentional deviation in answers. In such situations, questions must be formulated clearly and concisely.

During the interview, available information about the drug used must be taken into account. These details may come from the medical record, from witnesses, or from the suspect themselves. Many criminal investigation officers are unaware of the correlations between the type of drug used and the subject's behavior. For example, those who use morphine tend to be more organized and communicative, while poly-drug users often show incoherent thinking, poor memory, and scattered attention. Drug addicts are easily influenced and manipulated. Therefore, unverified sources or a single version of events must not be relied upon during the interview. It is advisable to record the entire interview

using audio and video equipment. It has been observed that drug addicts are more willing to admit to robberies, thefts, and muggings than to drug-related offenses—due to their desire to hide their addiction.

Conclusions. The criminal phenomenon generated by drug use in the Republic of Moldova can no longer be addressed through conventional and isolated means. Its complexity demands a coordinated, multidisciplinary intervention, in which criminalistics, forensic medicine, forensic psychology, and public health work together actively to enable effective investigation and an appropriate societal response. Crimes committed by drug addicts bear the distinctive mark of addiction – impulsivity, disorganization, and a sole motivation to obtain the drug – giving them a unique structure within the contemporary criminological landscape.

Understanding these particularities is not just contextual but an essential condition for the success of the criminal process. Criminal investigation officers must be able to quickly identify signs of drug use, manage interviews under conditions of vulnerability, and effectively utilize biological evidence or material traces left by perpetrators. Crime scene investigations, bodily examinations, the collection and analysis of evidence must be adapted to the behavioral realities of drug-dependent individuals.

At the same time, a humane and balanced approach to this phenomenon is crucial. Drug-dependent individuals should not be viewed only as offenders, but also as patients and citizens in need of support. The inaction of rehabilitation services, stigmatization, and purely repressive treatment inevitably lead to recidivism and marginalization. Only through a combination of firm penal reaction and consistent social and medical interventions can real progress be achieved in reducing the criminal impact of drug use. Therefore, the future of effectively combating drug-related crime depends both on the professionalism of investigations and the state and society's capacity to address the root causes of addiction and social exclusion.

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PREVENTION OF ENVIRONMENTAL CRIMES ACCORDING TO DIRECTIVE (EU) 2024/1203 ON THE PROTECTION OF THE ENVIRONMENT THROUGH CRIMINAL LAW

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Summary

Within the current context of the climate crisis and accelerated ecosystem degradation, knowledge about environmental crimes is gaining increasing importance at the national, regional and global levels. Environmental crimes, defined as illegal acts that negatively affect the natural environment, represent one of the fastest growing forms of crime at European level. The relevance of this field is also supported by recent legislative developments. At EU level, the adoption of the 2024 Directive on the Protection of the Environment through Criminal Law marks a landmark moment. It significantly expands the list of recognized environmental crimes, establishes more severe sanctions and imposes clearer liability for legal persons, reflecting the EU's increased concern for environmental threats combating.

Keywords: prevention, criminal law, criminal protection, environmental crime, transnational crime, criminal sanctions, etc.

Abbreviations:
EU – European Union
TFEU – Treaty on the Functioning of the European Union
OJ – Official Journal
Art. – Article
Para. – Paragraph

Introduction. The EU pays increased attention to the development and adaptation of criminal environmental protection policies to new emergencies, resulting mainly from human economic and industrial activities carried out in violation of regulations in the field of protection and conservation of natural resources. According to Article 4 paragraph (2) of the Treaty on the Functioning of the European Union (TFEU), the environment is an area in which the EU has shared competences. Based on this competence, the EU and the Member States can legislate and adopt legal acts aimed at regulating the environment. At the same time, Member States exercise their competence to the extent that the EU has not exercised its competence in this area.

In accordance with the provisions of Article 191 paragraph (1) of the TFEU, EU environmental policy contributes to the following objectives: "preserving, protecting and improving the quality of the environment; protecting human health; prudent and rational use of natural resources; international promotion of measures aimed at countering environmental problems on a regional or global scale and in particular the fight against

climate change" [1]. In the same context, in accordance with Art.191 para.(2) of the TFEU: "Union policy on the environment aims at a high level of protection, taking into account the diversity of situations in the different regions of the Union. It is based on the principles of precaution and preventive action, on the principle of remedying environmental damage as a priority at source and on the "polluter pays" principle [1].

The category of multiple preventive mechanisms includes the means of criminal law, the preventive effect of which consists in criminalizing and penalizing the most dangerous acts that threaten the environment. The EU's environmental criminal policy is exercised on the basis of Article 83 of the TFEU, under which the European Parliament and the Council may establish minimum rules on the criminalization of offences and sanctions in areas of particularly serious crime with a cross-border dimension, which includes environmental crime.

Making use of its competence in criminal matters, the European Parliament and the Council adopted on 19.11.2008 Directive 99 on the Protection of the Environment through Criminal Law. Later, on 11.04.2024 the European Parliament and the Council adopted a new Directive on the Protection of the Environment through Criminal Law. Among the arguments that supported the adoption of a new Directive on the prevention of environmental crime, we mention: "The Environmental Crime Directive aims to establish "*criminal law measures to protect the environment more effectively*". This objective has been pursued since its initial version in 2008, and the 2021 proposal intends to continue in the same direction, but with a "*much more detailed and integrative approach*" [2]. Therefore, the adoption of a new Directive was dictated by the need to measure the effectiveness of criminal prevention of environmental crime. Simultaneously, the evolution of forms of environmental crime, which as a rule, has a transnational organized character and has a major impact on human health and biodiversity, requires a firmer, harmonized and updated criminal response.

In the specialized doctrine it is rightly mentioned that "the role of criminal liability has increased during the recent years amid the intensification of actions with a negative impact on the environment that have caused serious damage to it, which has led to the awareness of the need for harsher and closer sanctions to stop the criminal phenomenon in this area. Against this background, criminal liability, which for a long time played a secondary role within the legal liability specific to environmental law, has become the primary form of holding accountable all legal subjects who have caused serious harm to the environment and its components" [3, p.1].

The author X. Ulianovschi claims that "the harmful degree (social danger) of ecological crimes is not limited only to the concrete harmful consequences, to the amounts of ecological and economic damage caused, as well as to the concrete damage to people's health, although this component of the social danger is the most real and noticed. The social danger of these crimes also consists in violating the ecological interests of society, especially in violating the rights of every person to a healthy environment, in causing damage to health, property, nature, in undermining respect for the legal norms that ensure and protect the environment, in decreasing the level of population security, ecological discipline, etc." [4]. Another approach argues that "environmental crime represents a latest generation category, within the general framework of crimes. It results in the objective impairment of environmental quality or the endangerment of this social value" [5, p.42].

Discussions and results obtained. In the following, using the comparison method and the logical method of interpreting European criminal law norms, we will present the amendments brought by (EU) Directive 2024/1203 on the Protection of the Environment through Criminal Law with (EU) Directive 2008/99.

The extension of the scope of criminalization. In terms of criminalization, Directive (EU) 2008/99 describes 8 environmental crimes (Art. 3), such as: pollution of air, soil or water with ionizing substances or radiation; violation of traffic and waste management rules; violation of waste transportation rules; illegal movement of nuclear materials or other dangerous radioactive substances; etc.

EU Directive 2024/1203 significantly expanded the number of environmental crimes (from 8 to 22 crimes). New offences have been included, such as placing on or making available on the EU market or exporting from the EU market raw materials or other relevant products associated with deforestation and forest degradation in breach of prohibitions; illegal movement, including the spread of invasive alien species; production, placing on the market, import, export, use or release of fluorinated greenhouse gases; etc. The expansion of the criminal scope was determined by the need for more effective protection of biodiversity and ecosystems. This highlighted the EU's current concerns about climate change and biodiversity loss.

Introduction of the concept of qualified crime. The innovation and expansion of European criminal law in the field of environmental protection was also prompted by the introduction of the concept of qualified crime. In Directive (EU) 2008/99 the concept of "*qualified crime*" in the field of environment was not implemented. In contrast, EU Directive 2024/1203 introduces the concept of "*qualifying offence*", strictly speaking, an offence committed in aggravating circumstances. Qualified forms of environmental crimes include harmful consequences that occur as a result of committing criminal actions or inactions, such as: significant and widespread destruction or damage, which is irreversible or long-lasting, the destruction of an ecosystem of considerable size or with considerable ecological value, or of a habitat within a protected site; significant and widespread damage that is irreversible or long-lasting to air, soil or water quality.

Definitions Clarity. In EU Directive 2024/1203 on the Protection of the Environment through Criminal Law**,** one of the essential novelties compared to Directive (EU) 2008/99 is *the clarification and standardization of key concepts*, with the aim *of harmonizing the application of the law in all Member States*. This approach aimed, on the one hand, to increase the degree of clarity and predictability of the criminal legislation of the Member States, and, on the other hand, to ensure the uniform interpretation and application of criminal law. These clarifications come in response to the difficulties encountered in interpreting and applying the provisions of the old directive, where the lack of clear definitions generated uneven practices and unequal sanctions.

By clarifying the concepts and conditions of criminalization, EU Directive 2024/1203 aims to *eliminate divergent interpretations*, facilitate *coherent application in all Member States*, and increase the efficiency of *the prosecution and sanctioning* of environmental offences. It is an important step towards professionalizing and strengthening environmental justice within the EU.

Sanctioning regime. In the EU Directive 2008/99, the provisions on sanctions were as general as possible, leaving a "*wide margin of appreciation*" to the Member States in terms of the concrete determination of penalties. The text of the directive provided that

the applicable sanctions should be criminal and "effective, proportionate and dissuasive", but *did not specify the amount of the penalties*, the types of penalties (imprisonment, fine, prohibitions) or their duration. Thus, the concrete implementation depended on national criminal legislation. There were no provisions on *minimum or maximum penalties*, nor classifications according to the seriousness of the acts. This has led to large differences between Member States in the application and severity of sanctions for similar offences. The EU Directive 2008/99 also mentioned the liability of legal persons for environmental crimes, but did not expressly impose criminal sanctions for them**,** leaving the option to apply other types of sanctions (administrative, civil, etc.).

In EU Directive 2024/1203, the sanctioning regime for environmental offences has been significantly strengthened and detailed, marking a clear difference from the general and minimal approach in the 2008 Directive. This development reflects the need to effectively combat environmental crime, which is increasingly sophisticated and has a major impact on ecosystems and public health. In addition to introducing of harsher sanctions, EU Directive 2024/1203 *establishes minimum and maximum levels of criminal sanctions*, depending on the seriousness of the crime. Through clearer, more severe and more proportionate sanctions, the directive aims to create a real deterrent effect so that economic actors and individuals no longer see environmental crime as a "low-risk, high-profit" activity".

For example, for individuals**,** in the case of serious crimes committed intentionally and causing substantial damage to the environment, custodial sentences of up to 10 years of imprisonment are provided**.** For legal persons**,** in the case of serious offences, considerable financial sanctions of up to EUR 40 000 000 or up to 5% of the total worldwide turnover of the legal person, either in the financial year preceding the one in which the offence was committed or in the financial year preceding the decision to impose the fine, are provided for.

Complementary sanctions and remedial measures. In addition to the main penalties (imprisonment, fines), EU Directive 2024/1203 also provides for a combination of complementary sanctions and remedial measures. Thus, the following complementary sanctions may be applied to individuals: obligation to restore the environment within a certain period of time, if the damage is reversible; obligation to pay compensation for environmental damage, if the damage is irreversible or the perpetrator is unable to restore the environment; exclusion from access to public funds, including public procurement procedures, grants, concessions and licenses; temporary prohibitions to run for public office; full or partial publication of the court decision concerning the crime committed and the sanctions or measures imposed, which may include the personal data of the convicted persons only in exceptional, duly justified cases [6].

In the case of legal entities, in addition to the obligation to restore the environment or the obligation to pay compensation, etc., the following complementary sanctions are also provided: exclusion from the right to receive public benefits or public assistance; temporary or permanent prohibition to carry out commercial activities; withdrawal of permits and authorizations to carry out the activities that led to the commission of the crime; placement under judicial supervision; judicial liquidation; closing down the units that served to commit the crime; obligation to establish due diligence systems to improve compliance with environmental standards, etc.

Individualization of criminal sanctions. To ensure efficient, fair and credible envi-

ronmental justice, EU Directive 2024/1203 provides clear criteria for penalties' individualizing, in other words, for adapting criminal sanctions to the circumstances of each case. The alleged goal for the punishment applied should be proportionate to the gravity of the act, the responsibility of the perpetrator and the consequences on the environment. When establishing penalties, the seriousness of the acts and the extent of the damage will be taken into account by assessing the size of the negative effects on the environment, including whether they are irreversible, long-lasting and extensive (for example, they affect entire ecosystems, rare species or protected areas).

In order to establish legal criteria for individualizing criminal sanctions, aggravating and mitigating circumstances related to environmental crimes are established. The first are set out in Article 8 of EU Directive 2024/1203: a) the crime caused significant irreversible or long-lasting destruction or damage to an ecosystem; b) the offence was committed within the framework of a criminal organization within the meaning of Council Framework Decision 2008/841/JHA (40); c) the crime involved the use, by the perpetrator, of false or forged documents; d) the crime was committed by a public official in the exercise of his duties; e) the perpetrator of the crime was previously convicted by a final court decision; f) the offence generated, or was expected to generate, substantial financial benefits or resulted in the avoidance of substantial costs, directly or indirectly, to the extent that those benefits or costs can be determined; g) the crime was committed within an area classified as a special protection area, etc.

As mitigated forms of environmental crimes, EU Directive 2024/1203 provides for the following circumstances: a) the perpetrator restores the environment to its previous state, where such restoration is not an obligation, or, before the commencement of a criminal investigation, takes measures to minimize the impact and extent of the damage or to repair the damage; b) the perpetrator transmits to the administrative or judicial authorities information that they could not have obtained otherwise, which will help them: i) to identify or bring to justice the other perpetrators of the crime or to find evidence.

Effective cross-border cooperation. EU Directive 2024/1203 recognized the mobile nature of perpetrators and the cross-border nature of environmental crimes. Therefore, international cooperation is recognized as an essential element for effectively preventing and combating environmental crimes. On the one hand, by establishing common offences and minimum sanctioning standards, the Directive facilitates cooperation between the judicial and environmental authorities of the Member States, and, on the other hand, this harmonization reduces the risk that environmental criminals will take advantage of legislative differences and take refuge in states with more permissive regulations.

The specialized doctrine rightly states that "international cooperation should be an integral part of the strategy for preventing environmental crimes. In the case of environmental crimes closely linked to the chains of the globalized market economy, cooperation at all stages of prevention is important. It is recommended that states adopt a proactive criminal strategy to strengthen intelligence-led policing in relation to potential serious ecosystem violations" [7]. Therefore, cross-border cooperation is considered one of the main challenges in investigating and prosecuting cases of illegal waste trafficking. These activities require close cooperation between the Member States involved, which does not always happen in a sufficiently fluid manner for effective investigation and prosecution [2].

The Directive establishes the cooperation of EU states in the field of environmental crime prevention through the following actions:

- Mutual harmonization of legislation between EU Member States;
- Supporting judicial and police cooperation;
- Exchange of information and good practices;
- Cooperation with third countries and international organizations;
- Joint investigations and common investigation teams;
- Technical assistance and capacity building.

Investigation tools. In accordance with Article 13 of EU Directive 2024/1203, Member States are required to put in place effective and proportionate investigative tools for the effective investigation and prosecution of environmental offences covered by the Directive. Unlike classic crimes, when handling criminal cases are related to environmental crimes, it will be taken into account that the relevant evidence is not always obvious or immediate, often requiring advanced scientific expertise, ecological impact assessments and the correlation of technical, biological or chemical data.

Another innovation of EU Directive 2024/1203 is the application of special tools for investigating environmental crimes. The establishment of specialized structures for investigations' managing would streamline the criminal response to these crimes by professionalizing investigative bodies. The pragmatic reason for establishing such a tool derives from the technical and interdisciplinary nature of environmental crimes, which in practical activity require extensive skills and integrated approaches. Therefore, the creation of dedicated units within prosecutors' offices or police structures can contribute to the professionalization of investigations, the standardization of practices and better coordination between environmental and judicial authorities.

Prevention and Education. Another innovation of EU Directive 2024/1203 compared to the one of 2008 is the extension of preventive measures. The new Directive does not only focus on criminal prevention, but also on measures of a different nature, thus marking a significant step in strengthening the European legal framework dedicated to combating environmental crimes. The Directive introduces positive obligations for Member States to promote public awareness of the legality and danger of environmental crimes, encouraging professional training programs for competent authorities, as well as educational campaigns for citizens and economic operators. It is thus recognized that the effective prevention of these acts requires, in addition to punitive instruments, a solid ecological culture, rooted in social responsibility and information.

In the specialized literature it is mentioned that "the major purpose of ecological education is to help people acquire the necessary knowledge that will allow them to understand environmental problems. However, this knowledge involves much more than the simple accumulation of information; it must contribute to understanding information and developing the competence to evaluate it, followed by acquiring the capacity to act responsibly, according to the long-term interests of the community, respecting the principles of sustainable development" [8].

Under these conditions, environmental education becomes a central element of environmental crime prevention, especially through its integration into national environmental and criminal justice policies. Thus, the 2024 Directive aligns with the EU's new priorities in terms of sustainability and protection of natural heritage, promoting a holistic model for environmental crime's combating.

National Strategies. Article 21 paragraph (1) of the 2024 Directive expressly provides that Member States shall establish and publish a national strategy on environmental

crime's combating by 21 May 2027. Based on this positive obligation, EU Member States are to develop and implement national strategies dedicated to environmental protection through criminal means, in response to the commitments undertaken. These strategies aim to transform the fight against environmental crimes from a one-off reaction into an integrated, coherent and results-oriented public policy, anchored in the principles of sustainability and protection of the general interest.

Statistics, reporting and monitoring. In order to make the prevention of environmental crime more efficient and ensure cognitive knowledge of the related dimensions, EU Directive 2024/1203 also introduced the obligation of statistical recording, reporting and monitoring of environmental crimes. On the one hand, this obligation placed on Member States reflects the need for rigorous and comparable records at European Union level of environmental crimes and the criminal liability applied, and on the other hand, it ensures empirical knowledge of the phenomenon, which is absolutely necessary for the development of preventive strategies and measures.

Therefore, under the new Directive, Member States are obliged *to collect detailed statistical data* on: types of investigated and prosecuted environmental crimes; sanctions applied (criminal and non-criminal); profile of the authors (natural or legal persons); remedial and restorative measures ordered, etc. The Directive also provides that *this data should be periodically transmitted to the European Commission*, in a standardized format, to allow comparative analysis and evaluation of the effectiveness of legislation at European level. Based on this information, the Commission can assess the implementation of the rules, identify any shortcomings and propose improvements. Emphasis is thus placed on the continuous monitoring of environmental criminal policies, in an effort to strengthen the efficiency of criminal justice and contribute to achieving climate and sustainability goals.

Conclusions. EU Directive 2024/1203 on the criminal protection of the environment reflects a significant change in the European Union's approach to the prevention and sanctioning of environmental crimes, underlining the interdependence between criminal law and the sustainable protection of ecosystems. Under the criminal aspect, legal and institutional instruments are introduced aimed at making the prevention of environmental crimes more efficient, such as the obligation of Member States to establish specialized investigative authorities and to guarantee continuous professional training in the field of environmental crime.

At the same time, in addition to the dosage of criminal instruments, EU Directive 2024/1203 establishes *a holistic preventive approach* to environmental crimes by expanding preventive mechanisms. Unlike the 2008 EU Directive, the new Directive does not only refer to the criminal prevention of environmental crimes, but to a particularly complex preventive system, which in addition to criminal instruments includes social, political, educational, organizational measures, etc. The new regulatory framework aims not only to repress the most serious forms of environmental damage, but also to strengthen a legal culture of ecological responsibility, thus contributing to the implementation of the pillars of the European Green Deal.

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CHALLENGES TO CRIMINAL LAW IN MATTERS RELATED TO TRANSNATIONAL ORGANIZED CRIME: LEGAL SOLUTIONS FOR PREVENTION AND COUNTERING CRIME

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Summary

The research addresses the challenges that the criminal law is facing to transnational organized crime, a complex and ever-expanding phenomenon that often transcends national borders and threatens global security. The study discusses how traditional law enforcement authorities are often insufficient or even outdated to dealing with these forms of crime, a phenomenon that involves international networks and various illegal practices such as the illegal circulation of drugs, the illegal trade of weapons or ammunition, the smuggling of weapons and excise goods, human trafficking, the convergence of corruption of various levels with organized crime and money laundering.

Amongst the prevention and countering organized crime measures that the research is discussing are: strengthening the cooperation between the structures responsible for the elaboration and application of relevant legislation, the exchange of information, the development of common legal norms, the synchronization of mechanisms for preventing and combating the phenomenon at a global level, and the harmonization of criminal legislation. The article suggests several legal solutions, such as the use of international cooperation instruments, the strengthening of international treaties and the creation of a legislative framework that would allow for a faster and more effective response against organized crime. In conclusion, the study emphasizes the need for a coordinated response at national and international levels, as well as the importance of strengthening the rule of law and mutual trust between nations.

Keywords: organized crime, trafficking, criminal group, international cooperation, victim protection, legislation.

Introduction. Transnational organized crime is one of the greatest challenges faced by legal systems and national authorities globally. This type of crime, characterized by criminal networks that cross state borders and engage in large-scale illicit activities such as drug trafficking, human trafficking, arms smuggling, money laundering, or terrorism, severely tests the effectiveness of traditional criminal law.

In these realities, criminal law must evolve and adapt its strategies and tools to respond to the new challenges posed by transnational organized crime. Measuring and defining this phenomenon is not an easy task. This comes with the fact that, besides a few common features, the nature, causes, and origins of organized crime vary significantly

from country to country, and criminal legislations often responds to specific patterns of organized crime characteristic to that territory. Factors such as geography, demographics, cultural diversity, and social stratification differ from state to state, leading to variations in both the forms of organized crime and the social response. Consequently, different countries face relatively distinct paterns or types of organized crime, and the approaches to defining them are, therefore, varied.

Researchers in the United States believe that a clear definition of organized crime is essential for assessing the effectiveness of legislative measures aimed at combating it [6, p.306]. In the view of American researchers, organized crime also includes street gangs involved in drug trafficking, Jamaican groups, Chinese tongs, and other criminal organizations.

Although certain groups have an interstate or even transnational character, this aspect is not relevant from the perspective of federal authorities' jurisdiction.

In 1986, the chairman of the Organized Crime Commission described the phenomenon in a way that highlighted the involvement of external groups that protect or support criminal organizations. It was stated that "Organized crime represents the collective result of the activities of three components: the criminal group, which has a core made up of individuals bound by racial, linguistic, ethnic, or other ties; the protectors, meaning those who defend the interests of the groups; and the specialists, who offer their services, usually temporarily, to increase the group's profits (interests)" [8].

Other experts argue that a single definition of organized crime should be abandoned and, instead, emphasis should be placed on specifying the fundamental structural characteristics of this phenomenon, which include: durability, continuity, hierarchy, diversity, violence, the threat of violence, and corruption [2].

French researchers acknowledge the existence of organized crime as an undeniable reality, but face difficulties in defining it, as organized crime is not regulated by any specific criminal offense under French special criminal law, nor does it fall within a clearly defined concept in general criminal law. As an initial approach, the term refers to a serious offense committed by several individuals acting within a hierarchical and structured organization [1, p.341].

Methods and materials applied. This study explores the major challenges faced by criminal law in the fight against transnational organized crime and proposes legal solutions for the prevention and combating of this global phenomenon. Additionally, to provide a comprehensive overview, a comparative framework has been used to identify effective measures for tackling organized crime in different jurisdictions.

This methodology provides a solid foundation for the research and understanding of the challenges faced by criminal law in the field of combating transnational organized crime and proposes legal solutions for preventing and fighting this global phenomenon.

Discussions and results obtained. *1. The impact on contemporary societies.* Transnational organized crime affects modern societies in a variety of direct and indirect ways. First, these criminal groups destabilize legal systems and state institutions by infiltrating political and economic structures, corrupting officials, and undermining law enforcement. They also contribute to an increase in violence and social conflicts, destabilizing social cohesion and creating an atmosphere of fear and insecurity. Economically, organized crime undermines national economies through various illicit activities, such as money laundering, tax evasion, or trafficking in counterfeit goods, leading to significant losses of financial resources.

Moreover, these criminal groups jeopardize the safety of citizens through their violent activities, such as drug trafficking, human trafficking, and terrorist attacks. Transnational organized crime also has a major impact on fundamental human rights, particularly on the most vulnerable segments of the population, such as women and children, who are often victims of human trafficking or sexual exploitation.

Typologies of organized crime offenses are following:

Drug trafficking. It is one of the most widespread and profitable forms of transnational organized crime. Criminal groups control the global networks for the production, distribution, and sale of drugs, leading to an increase in consumption and addiction, as well as destabilizing communities through violence and conflict. Drug trafficking generates enormous profits, which are often reinvested in other criminal activities, including money laundering.

Human trafficking. This type of crime involves the recruitment, transportation, transfer, and illegal exploitation of individuals, usually for forced labor or sexual exploitation. Transnational organized crime plays a significant role in these networks, with traffickers exploiting the vulnerability of victims and the corruption or weaknesses of local authorities to carry out illegal activities on a large scale.

Money laundering. Transnational criminal groups generate substantial income from illicit activities, and money laundering is the process by which this money is integrated into the legal economic system. This activity is crucial for maintaining and expanding the power of these networks, allowing them to invest in various legitimate businesses, corrupt officials, and obtain financial cover for their illegal activities.

Terrorism. Transnational organized crime is often interconnected with terrorist activities, being involved in financing and supporting terrorist groups through illicit activities such as arms trafficking, smuggling, and money laundering. In many cases, criminal groups and terrorist organizations collaborate to achieve their objectives, creating a complex network of violence and instability.

Smuggling and illegal arms trade. In some regions of the world, transnational criminal groups are involved in the illegal arms trade, which contributes to the escalation of armed conflicts and violence in various parts of the world. These activities not only endanger the lives of citizens but also fuel both internal and external conflicts.

Transnational organized crime represents a major threat to global security and stability, having a direct impact on all aspects of contemporary society. To countering organized crime requires close collaboration between states, international authorities, and non-governmental organizations, as well as a constant adaptation of strategies and legislation to address the evolution of these forms of crime.

2. Legal and law enforcement challenges in the face of transnational organized crime. Transnational organized crime presents a significant challenge for both national and international criminal law due to its complexity and cross-border nature. In the face of this global phenomenon, legal systems in various countries encounter major difficulties in effectively combating criminal networks that operate across multiple territories, exploiting gaps in legislation and weak coordination between authorities. Effectively combating transnational organized crime requires both tailored legislative measures and international cooperation.

In most countries around the world, national criminal law addresses the phenomenon of organized crime by criminalizing specific offenses and creating structures to com-

bat them, such as agencies specialized in investigating large-scale crimes (e.g., combating drug trafficking, money laundering, or human trafficking). Additionally, national laws allow authorities to establish specialized units, adopt witness protection measures, and impose severe sanctions on individuals involved in such criminal groups.

However, the limits of national criminal law become evident when crimes committed by transnational networks involve multiple jurisdictions. For example, if a criminal group operates in several states, national authorities may face difficulties related to the extradition of criminals, the application of appropriate sanctions, and coordination between law enforcement agencies, as well as fully meeting the conditions for legal cooperation in criminal matters, particularly the dual criminality requirement.

Although at first glance it may seem like a simple task, creating a criminal legislative system to combat organized crime is quite a complex process. This is especially difficult in the Republic of Moldova where the phenomenon of organized crime is relatively recent, and first, its trends and paterns must be understood. The main challenge lies in defining the concept of organized crime and integrating it both into criminal law and criminal procedure law.

Thus, even advanced countries with solid economic and social stability and resources for long-term criminological research have introduced criminal measures to combat organized crime later. So, most Western countries, starting with Italy, followed by France and England, have adopted coherent approaches to combating organized crime through criminal law in the last decade, while Japan, Germany, and Greece have done so in recent years.

The cross-border nature of organized crime requires, first and foremost, clarification of the applicable law. An initial response comes from national legal norms regarding the effects of the application of criminal law in different territories, provisions that are found in all national criminal justice systems in one form or another.

Additionally, for certain offenses, even before addressing organized crime as a phenomenon, international criminal law norms were necessary (such as for trafficking in women and children, piracy, drug trafficking, etc.), offenses that are sanctioned through treaties and conventions. Not least, intergovernmental norms agreed upon by the parties through common bilateral agreements are considered, which would allow for the application of domestic criminal law, such as sanctioning, extradition, seizing, confiscation, and others.

The application of criminal law in space refers to the process of enforcing the provisions of criminal law in relation to where the crimes are committed (within the country or abroad), whether by the state's citizens or by foreign nationals [3, p.49].

Strict territorial application excludes certain acts from the scope of criminal law that affect or endanger the social values that this law is meant to protect. This application can, in certain situations, become an obstacle in the fight against crime, whether committed by the country's own citizens or by stateless individuals residing in the Republic of Moldova. To ensure that such acts are not left unpunished and can be subject to the criminal law of the Republic of Moldova, the Criminal Code of the RM contains provisions regarding the application of criminal law in space [4, Art.11].

The principle of territoriality of criminal law, accompanied by the principle of personality of criminal law, although it significantly extends the scope of criminal law, is not sufficient to fully guarantee the achievement of the scope stated in Article 2 of the Criminal Code of the Republic of Moldova.

To fill this gap, the principle of the real applicability of criminal law was introduced into the criminal legislation. According to these provisions, criminal law applies in the case of specific offenses committed outside the national territory by a foreign citizen or a stateless person who does not reside in the territory of the RM, provided that those offenses concern the safety of our state or one of its citizens [4, Art.11, para.(3)].

Thus, there is a connection between criminal law, the offense, and the place where the offense was committed, which also generates numerous and complex practical problems that need to be addressed specifically in the field of organized crime.

There are cases in which the offense begins, or in other words, is prepared, in one country and continues across the territory of one or more states, and the product of the act or the object involved transcends borders. Regarding participation, criminal groups are usually composed of citizens from several countries, and when it comes to applicable sanctions, some legal systems are more lenient, which leads offenders to seek refuge in these areas. For example, in countries such as Germany, Austria, Switzerland, Czech Republic, Slovenia, Japan, and China, sanctions are much milder compared to the same offenses committed in other countries, where penalties are much harsher, such as in France, Romania, Arab states, and others.

The application of criminal law by a state based on the place where the offense was committed generates numerous and complex issues, as mentioned earlier. However, it is widely accepted that the fundamental principle of applying criminal law in relation to space belongs to territoriality, which results from the expression of jurisdictional sovereignty.

We support the idea that the organization of crime-fighting activities both at the national and international levels must allow for the criminal accountability of offenders regardless of where the offense was committed, especially in matters related to organized crime. This should be the fundamental objective for applying criminal law in relation to space. These issues have mainly been addressed through the adoption of principles of law such as territoriality, personality, reality or real protection, and the principle of universality.

According to the criminal legislation of the Republic of Moldova in place, extradition may be granted or requested based on an international agreement due to the principle of reciprocity, and in the absence of these, in accordance with the law [4, Art.13]. The institution of extradition was established through agreements between states [5], with the role of supporting the common fight against crime at the international level, specifying the following: conditions related to the offense, conditions related to the offender, procedural conditions [3, pp.64-69.], and which find their legal foundation in material and procedural criminal law.

Subsequently, international criminal law addresses the phenomenon of organized crime through various international conventions and treaties which establish common norms and principles for combating criminal activities that transcend national borders. An important example is the United Nations Convention against Transnational Organized Crime (the Palermo Convention), which encourages cooperation between states in combating organized crime, as well as the Protocol on Trafficking in Persons. It should be noted that although the criminal legislation of the Republic of Moldova only imposes practical conditions regarding the number of participants in a criminal association, the convention establishes in Article 2 the precondition of having at least three participants,

and more, to meet the definition of an organized criminal group.

Next, some of the main provisions of the convention that are relevant from the perspective of material and procedural criminal law for combating international crime and that must be considered are:

International cooperation. The Convention emphasizes the importance of cooperation between states for the prevention and countering transnational organized crime. This includes measures such as the exchange of information, judicial assistance, and cooperation in extradition matters. States are encouraged to cooperate bilaterally, regionally and globally to combat criminal groups operating beyond national borders.

Prevention measures. The Convention provides for the adoption of measures to prevent organized crime, including public education and training authorities to recognize the signs of organized criminal activities. It also promotes measures to strengthen domestic legislation and to create effective control mechanisms.

Criminalization of criminal behavior. The Convention requires signatory states to adopt legislation that criminalizes specific behaviors of organized crime, such as the formation of organized criminal groups, human trafficking, drug trafficking, and money laundering. It also calls for the effective regulation of transnational crimes to ensure the prevention and proper punishment of criminal activities that affect multiple countries.

Victim protection. The Palermo Convention emphasizes the need for the protection of victims of organized crime, including those who are victims of human trafficking. States are encouraged to create mechanisms to protect and support victims, including offering asylum and witness protection, in order to encourage their cooperation with authorities.

Measures against money laundering. Within the Convention, money laundering is addressed as a major issue related to organized crime. States are encouraged to adopt measures to prevent the use of financial and economic systems for laundering money derived from illegal activities, including the creation of financial authorities and regulations that allow for the monitoring and interception of illegal financial flows.

Measures on extradition and judicial assistance. The Convention provides measures to facilitate the extradition of criminals who have committed transnational crimes. It also promotes procedures for mutual legal assistance between states in the investigation and prosecution of organized crimes, including the exchange of evidence and the provision of technical assistance.

Protocol on human trafficking and victim protection. Within the Palermo Convention, specific protocols have been adopted to combat human trafficking, including the protection and assistance provided to victims of trafficking, especially women and children. These protocols outline measures for preventing trafficking, identifying victims, and promoting cooperation between signatory states to combat this phenomenon.

Implementation and monitoring. The Convention emphasizes the need for signatory states to implement the agreed measures into their national legislation and to collaborate with international organizations, to assess and monitor progress in combating transnational organized crime.

Overall, the United Nations Convention against Transnational Organized Crime provides an essential international legal framework for the prevention and combating of organized crime on a global scale, promoting effective cooperation between states and international organizations in this area.

International organizations such as Interpol, Europol, and SELEC also play a crucial

role in facilitating the exchange of information and coordinating actions between national authorities.

However, even within international criminal law, there are challenges related to the national sovereignty of states and the differences in legal regulations between different countries. Furthermore, the effective implementation of international standards depends on the political will and cooperation of member states, with some states hesitating to relinquish jurisdictional control over cases involving organized crime.

Some of the difficulties in coordinating and enforcing the law can be highlighted as follows:

Legislative and procedural differences. One of the main obstacles in combating transnational organized crime is the legislative disparity between states. Each country has its own laws and procedures regarding organized crime, and these differences can create gaps and conflicts in the application of the law. For example, certain offenses that are considered severe in some states may be regulated with more leniency in others. This makes it difficult to collaborate and prosecute criminal groups operating across multiple countries.

Limited cross-border cooperation. Although there are international mechanisms for cooperation in combating organized crime, the effective application of the law in transnational cases often faces administrative, diplomatic, or legal barriers. Many of these criminal groups are highly mobile and can quickly relocate their operations from one territory to another, and national authorities do not always have the necessary resources to pursue criminals involved in operations across multiple jurisdictions. Furthermore, extradition procedures are sometimes slow and complex, and some states refuse to extradite individuals involved in crimes for various reasons related to human rights or political considerations. Additionally, the differing regulation of tax and customs offenses, which are subsidiary to money laundering crimes, may create obstacles to cooperation, especially concerning the principle of double criminality.

Corruption and infiltration in institutions. In many cases, transnational criminal groups manage to corrupt officials from public administration or law enforcement agencies, making law enforcement and evidence handling extremely difficult. Corruption can directly affect the efficiency of criminal investigations, allowing criminal networks to carry out their activities without hindrances, while infiltration can delay or block the necessary legislative measures for effectively combating organized crime.

Witness protection and lack of information. Another significant difficulty in combating transnational organized crime is the protection of witnesses and information sources. Often, witnesses or informants who could assist in identifying and capturing criminals fear for their lives due to violent reprisals from criminal groups. Inadequate protection can lead to a decrease in the availability of crucial information, making investigations much more challenging.

Finally, it should be noted that the importance of the constitutive elements of crimes within the scope of organized crime in different states cannot be neglected.

Thus, while the criminal legislation of the Republic of Moldova outlines participation forms in the general part of the Criminal Code, with distinct offenses criminalized in the special part of the Code, such as the creation or leadership of a criminal organization and joining such organization (presuming the division of functions within the organization and its structures, including administration, security, and execution of the organization's

criminal intentions in order to influence or control the economic and other activities of individuals and legal entities, or to obtain advantages and achieve economic, financial, or political interests, as outlined in Articles 47 and 284 of the Criminal Code), or organizing armed gangs (Article 283 of the Criminal Code), or crimes with terrorist characteristics or those threatening national security – these crimes are often convergent with organized crime – could be excluded from international cooperation through the application of exceptions or might not necessarily have a corresponding form or content in the criminal legislation of other countries. As well, they could pose an obstacle to the effective prevention and countering such criminal acts.

Conclusions. The fight against transnational organized crime represents one of the greatest challenges of contemporary criminal law, given the complexity and cross-border nature of this phenomenon. Although both national and international criminal law have evolved significantly to address this global threat, the effective application of the law remains difficult due to legal differences between states, the diversity of organized crime forms, and the differences in national legislations.

Prevention measures, like strengthening international cooperation, harmonizing legislations, protecting victims, and prevention of illicit financial flows (i.e. combating money laundering), are essential to limit the negative impact of organized crime. Additionally, legal solutions, including the use of international criminal law norms and the adoption of interstate agreements, enhances a more effective and coordinated response.

At the same time, the recovery of assets acquired by organized crime structures and hidden in other countries, such as non-cooperating states for tax purposes or secessionist "grey zone" territories, like Transnistria and Northern Cyprus, highlights the inefficiency of existing measures to combat this phenomenon. Discouraging this structures through the application of measures to deprive them of funds, such as special and extended confiscation of assets derived from criminal activity, is one of the primary objectives of state authorities and law enforcement agencies.

From this perspective, international cooperation with the authorities of the states that effectively control these "grey zones" remains a priority [9], and deterring organized crime through effective prosecution and confiscation of criminal assets, identifying, locating, seizure, and holding accountable the members of such structures, even when they sometimes resort to various methods of identity modification (obtaining fake identity documents, seemingly legal but acquired through illegal methods, etc.), depends on the professionalism and dedication of those involved in the prevention and fight against this highly dangerous phenomenon.

Consequently, we believe that criminal legislation must be preemptively adapted through in-depth study and comparative legal analysis to effectively respond to the challenges in the field of organized crime, adjusted to encompass, as much as possible all current forms of criminal acts, from predicate offenses to the varying purposes of the association. It should provide substantial criminal law tools that are dissuasive [7], allowing for prompt and simple intervention, especially at early stages when the scope of the circumstances is just beginning to emerge, and to contain measures that law enforcement, investigative, and security bodies can take to ensure their intervention is thorough and effective, commensurate with the scale and magnitude of the challenges.

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SEARCH AS A TACTICAL AND FORENSIC MEANS OF SECURING CIVIL ACTION AND SPECIAL CONFISCATION

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Summary

This article examines search operations from the perspective of a dual purpose: as a tactical and forensic tool for evidence gathering and, simultaneously, as an effective instrument for securing civil action and applying special confiscation measures. The analysis is conducted in the context of judicial practice in the Republic of Moldova, highlighting existing systemic shortcomings, such as the lack of a standardized procedure for damage assessment during searches and the insufficient preparedness of criminal investigation bodies in dealing with civil law aspects. Legislative and public policy recommendations are provided, including the introduction of methodological guidelines, the establishment of multidisciplinary teams, and the specialized training of investigators. Additionally, the article presents best practices from European jurisdictions that have recognized search as a key component in asset recovery and enforcement of confiscation measures.

It concludes that the effectiveness of search procedures can be significantly enhanced through an integrated approach that combines forensic tactics with civil and criminal asset recovery tools.

Keywords: search, civil action, criminal proceedings, forensic science, enforcement tool, damage, tactics, suspect, civil party, injured party, tactical method, documentation, special confiscation.

Introduction.Criminal proceedings can no longer be regarded solely as a mechanism for establishing guilt and imposing penalties for criminal offenses, but also as a system for restoring the violated rights of the parties involved. In this context, increased attention must be given to procedural-criminal measures that, beyond their evidentiary role, contribute to achieving the reparatory function of criminal justice.

Search, as regulated by Articles 125-128 of the Criminal Procedure Code of the Republic of Moldova (CPC RM) [1], is one such measure. Traditionally viewed as a means of obtaining evidence, search also plays a significant role in securing civil claims within criminal proceedings. According to the CPC RM, a search may be authorized by an investigating judge for the purpose of discovering and seizing objects or documents that may serve as evidence or aid in recovering damages caused by the offense. The law expressly provides for the possibility of securing assets during searches (Articles 127 and 128 CPC RM), thereby reinforcing the role of this measure in safeguarding the victim's civil interests.

The aim of civil action is to compensate for material, physical, or moral damage caused by a crime. Searches can assist in locating stolen goods, determining the value of the damage, uncovering the financial resources of the accused, and enabling the seizure of material assets that are subject to confiscation. As such, search becomes a preventive tool against the alienation of assets that could be used to redress the harm caused by the offense.

Discussions and results obtained. Through Law No.35 of March 13, 2025 [2], the legislator refines and enhances the mechanism for the confiscation of material assets obtained as a result of criminal activity or of assets subject to confiscation for the purpose of securing civil action. Accordingly, amendments are made to the Criminal Code concerning special confiscation, extended confiscation, and third-party confiscation.

By means of these regulations, the legislator aligns national legislation with European standards, in particular with Regulation (EU) 2018/1805 of the European Parliament and of the Council of 14 November 2018 on the mutual recognition of freezing and confiscation orders [3].

According to the Criminal Code of the Republic of Moldova (CC RM) [4], "special confiscation consists in the compulsory and gratuitous transfer of the assets indicated by law into the ownership of the state" (Art.106 para.(2) CC RM). In cases where such assets no longer exist, or cannot be found, or cannot be recovered, or their confiscation is otherwise impossible, another asset of equivalent value shall be confiscated as a priority; in the absence thereof, their monetary equivalent shall be confiscated.

Extended confiscation, pursuant to Art.106^1 CC RM, refers to assets other than those specified in Art.106 and applies only in cases where the suspect, accused, or defendant has committed offenses expressly listed by the legislator (such as certain crimes against peace, security and humanity, war crimes, and certain offenses against the person, etc.). This list provided by the legislator is exhaustive.

According to Art.106^2 CC RM, third-party confiscation concerns assets subject to special or extended confiscation that were transferred by the suspect, accused, defendant, or convicted person to third-party individuals or legal entities, or that were acquired by such third parties from the above-mentioned persons, where the third parties were aware of the illicit origin of the assets and how they were obtained by the offender.

The amendments to the criminal legislation also necessitated corresponding changes to procedural criminal law. From a forensic tactical standpoint, the criminal investigation officer must be aware that the wording used by the legislator in Art.125 of the Criminal Procedure Code (CPC RM) – which states that a search shall be conducted to find and seize "instruments intended to be used or that were used in the commission of an offense, objects and valuables derived from the offense, as well as other items or documents that may be relevant to the criminal case and cannot be obtained by other evidentiary procedures" – has been significantly broadened under the aforementioned legal provisions.

For instance, in order to ensure the possibility of special confiscation, during a search, the investigating officer is now required to look for:

– Items used or intended for use in committing the offense;

– Assets resulting from criminal activity; any proceeds or benefits derived from such assets;

– Items given to induce the commission of a crime or to reward the offender;

– Assets held in violation of legal provisions;

– Assets partially or fully converted or transformed from criminal proceeds or the benefits derived therefrom [5, p.530];

– Assets that constitute the object of money laundering or terrorism financing offenses.

Thus, the role of the search is strengthened as a tactical forensic tool for securing civil action, acquiring a dual character – evidentiary and patrimonial – which compels criminal investigation authorities to adopt an integrated approach that combines the evidentiary purpose with the objective of damage recovery.

For a search to be effective, meticulous preparation is essential [6, p.120]. In light of the new legal provisions concerning the confiscation of assets within criminal proceedings, the search assumes a key role not only in identifying and seizing material evidence, but also in ensuring the enforcement of civil action, including special, extended, or third-party confiscation.

This complex dimension requires a reconfiguration of tactical planning, operational methodology, and interdisciplinary collaboration during criminal investigations.

The first step in efficiently organizing a search aimed at securing civil action lies in the clear and anticipatory definition of operational objectives. While the traditional concept of search primarily targeted the discovery of instruments of the offense and direct evidence, under the new procedural paradigm introduced by the expanded confiscation framework, it must also focus on the identification, location, and preservation of assets linked to the damage caused by the offense, including those subject to special, extended, or third-party confiscation.

– In this context, the criminal investigation officer is required to develop, from the earliest stage of the criminal proceedings, plausible forensic hypotheses regarding:

– The manner in which assets were obtained through criminal activity (e.g., illicit income, bribes, profits from fraud);

– Methods used to conceal their origin (e.g., registering assets under third-party names, creating front companies, use of cryptocurrencies);

– The trajectory of potential transfers, including between bank accounts, digital platforms, or persons affiliated with the offender;

– Forms of conversion and reinvestment (e.g., acquisition of real estate, vehicles, luxury items, shares, or cryptocurrencies).

This approach necessitates defining the types of assets being sought, such as:

– Cash (domestic or foreign, hidden physically or in electronic systems);

– Valuable movable property (jewelry, watches, artwork, high-end electronics);

– Real estate (apartments, land, recently built constructions lacking economic justification);

– Financial assets (stocks, bonds, bank accounts, virtual wallets);

– IT equipment or storage media that may contain unofficial accounting records or passwords to digital funds.

Moreover, the assessment of the estimated damage caused in the case is essential to ensure the proportionality [7, p.37-42] of search and seizure measures. By correlating the assets being sought with the damage specified in the case file, it is ensured that the search operation is neither underestimated (allowing assets to be concealed or removed) nor excessive (which could lead to procedural nullities).

Another important tactical element is the anticipation of actions aimed at conceal-

ing, dispersing, or disposing of assets by the offender or their close associates. In practice, it is common to encounter fictitious transfers to relatives or trusted individuals, the storage of assets in locations not officially linked to the offender (such as residences, garages, rented storage units, or properties belonging to others), as well as the use of cryptocurrencies or offshore accounts to break the evidentiary chain.

To counteract these concealment strategies, tactical planning of the search must include, in addition to the primary location, other potential hiding places, including indirectly controlled properties, commercial premises, vehicles, and digital media.

It is also advisable to obtain and analyze in advance land registry records, banking information, and digital traffic data, which may guide the search toward relevant assets.

This integrated, damage-oriented approach transforms the search into a genuine forensic tool for safeguarding civil interests, enhancing the efficiency of asset recovery and ensuring the coherent application of the principle of inviolability of property [8, p.173] within criminal proceedings.

The first step in organizing an effective search is the establishment of clear tactical objectives that go beyond merely identifying and seizing the instruments of the offense. These objectives must specifically aim at identifying, locating, and securing assets that may be subject to civil action or to special or extended confiscation.

The criminal investigation officer must, from the initial stage of the criminal investigation, develop forensic hypotheses regarding the manner in which the assets were acquired:

– Whether the assets were obtained directly from the offense (e.g., money from fraud, bribery, or trafficking);

– Whether were transferred to third parties in an attempt to evade confiscation;

– Whether were concealed under other patrimonial forms (e.g., real estate purchased in the name of another person);

– Whether were transformed (for example: cryptocurrencies obtained through illegal activities and converted into luxury goods or shares).

This approach requires identifying the types of assets being targeted: cash, movable or immovable property, bank accounts, securities, cryptocurrencies, artwork, vehicles, IT equipment, and more. Some of this information may become available at the planning and authorization stage of the search through the results of special investigative measures [9, p.414].

Estimation of the damage caused and its correlation with the value of the assets sought represents an essential component in planning the search as a forensic means of securing civil action. This process involves a rigorous and well-documented approach that allows for the identification and freezing of those assets that may cover, in whole or in part, the damage resulting from the offense. In criminal proceedings, determining the value of the damage caused is a key circumstance that relates not only to the legal classification of the act but also to the necessity of its recovery or the enforcement of special confiscation.

The estimation of damage is carried out based on accounting or financial documents (contracts, invoices, ledgers, bank statements), audit or valuation reports (particularly in cases of economic or corruption-related offenses), statements of injured parties, and evaluations performed by authorized experts, if necessary (especially for high-value or difficult-to-assess items such as works of art, cryptocurrencies, software, etc.).

This stage is crucial for determining whether the damage is recoverable, in what proportion, and what procedural measures (search, seizure) are justified. Once the damage is estimated, the criminal investigation officer will direct the search toward identifying assets:

– Obtained directly through the offense (e.g., stolen money, misappropriated goods);

– Acquired with resources originating from the offense (e.g., real estate purchased with illicit funds);

– Converted (for example: transforming cash into cryptocurrencies, jewelry, vehicles);

– Concealed or disguised (for example: assets registered under fictitious third-party names, repeated transfers).

For example, if the estimated damage is €50,000, and assets (cash, car, luxury watches, jewelry, high-end branded items) worth approximately €45,000 are identified during the search, it can be considered that there is a justified proportionality between the damage and the value of the assets to be seized.

A key aspect in the preparation and execution of the search as a forensic means of securing civil action lies in the precise estimation of the damage caused by the criminal act and in the proportional relation of this damage to the value of the assets pursued. This aspect is not only of practical relevance but also holds important procedural and constitutional value: the protection of the right to property and the prevention of disproportionate seizure measures.

The estimation must be performed from the earliest stage of the criminal investigation, based on site investigation reports, statements from "injured" parties, accounting records, financial-expert assessments or audit reports (if available at that stage), and preliminary investigations regarding money flows, property transfers, and asset conversions.

After determining the approximate value of the damage, the criminal investigation officer, at the stage of preparing the search, must identify and document assets susceptible to confiscation (cash, real estate, vehicles, jewelry, cryptocurrencies, shares, equipment, etc.), draw up a comparative table between the estimated value of each asset and the total damage, and establish a reference value threshold for the sought assets, so that the search does not target assets lacking economic or symbolic relevance in relation to the damage.

This assessment will enable justification before the court for requesting the search warrant and precautionary measures, proof of the reasonableness of the procedural intervention on the property of the person concerned, and the safeguarding of the principle of proportionality, as provided both in the Constitution of the Republic of Moldova and in the case law of the European Court of Human Rights.

Modern forensic practice recommends establishing an estimated value threshold in relation to the damage, based on a tactical search plan, the use of documentation sheets indicating what assets were sought, identified, and seized, and cooperation with financial specialists or accredited evaluators for professional and documented estimations, especially in cases involving significant damage or assets with difficult-to-determine value.

In preparing for the execution of searches and the application of seizures, the criminal investigation officer must anticipate the offender's strategies. These refer to the concealment of assets through intermediaries (successive transfers or disguised investments), and the adaptation of the action based on the offender's profile (type of offense,

patrimonial structure, personal and business connections).

Establishing these objectives enables the officer to plan the concrete directions of the search and to prioritize certain locations and types of assets, including identifying digital sources (laptops, phones, banking apps) that may provide relevant information about asset circulation or the intent to conceal them.

Thus, the search must be prepared not as a simple evidence-gathering activity, but as a systematic effort based on forensic hypotheses regarding the illicit economic flow generated by criminal activity.

To ensure the validity of the evidence obtained, it is essential that the search is meticulously documented, in full compliance with all procedural requirements. This includes:

– Detailed photography of each asset susceptible to confiscation or potentially subject to civil action;

– Meticulous drafting of the search report (which constitutes evidence [10, p.424]), clearly indicating the location where each asset was found, its condition, and any supporting documentation;

– Separate labeling and sealing of the assets, accompanied by descriptive annexes;

– Audio-video recording, where possible, particularly in cases involving assets of particularly high value or contested ownership.

This stage holds dual evidentiary value: on the one hand, it confirms the illicit origin of the assets; on the other hand, it facilitates the recovery of damages through civil action within the criminal proceedings or through subsequent special confiscation.

Given the diversity of assets subject to confiscation or seizure for the purpose of securing civil action, the involvement of specialists becomes essential. These may include:

– Certified appraisers, in the case of high-value movable or immovable property;

– Forensic accountants, for identifying suspicious transactions and tracing financial flows;

– IT specialists, for analyzing electronic devices and recovering data that may reveal asset or cryptocurrency transfers;

– Art or antiquities experts, in cases involving valuable artworks [11, p.148].

This interdisciplinary collaboration strengthens the legal basis for requesting authorization of searches, applying precautionary measures, and for the subsequent filing of a civil action within the criminal trial. In modern forensic practice, the search is no longer limited to the offender's residence. It is recommended that it also target other locations relevant to the pursuit of damages or the identification of transferred or concealed assets. These may include secondary residences, storage spaces, garages, business offices, safety deposit boxes, digital wallets and servers, online platforms or cloud services used for storing supporting documents or cryptocurrencies.

The evolution of asset-concealment techniques, the use of third parties, and digital technologies to hide illegally obtained assets require a broad, strategic, and anticipatory approach. The criminal investigation officer has a duty not only to verify the site of the alleged offense, but also to actively investigate all locations where crime-derived assets may be stored, transferred, hidden, or converted:

a) Secondary residences and alternative-use properties. It is common for offenders to own or use secondary properties (vacation homes, rented spaces, or homes belonging to relatives) to store valuable assets or compromising documents. These locations can be

easily overlooked in classic search planning; however, telephone records, utility bill payments, or social media activity may indicate relevant addresses.

b) Storage spaces, garages, and commercial premises. High-value assets (for example: IT equipment, paintings, jewelry, luxury goods, cash) are often stored in garages, storage units, rented containers, or commercial spaces. In forensic practice, it is recommended to request information from self-storage companies, property managers, or local authorities to identify such locations.

c) Bank safety deposit boxes. Extended confiscation often involves cash hidden in safety deposit boxes registered in the offender's name or under proxies. Although access is strictly regulated, searches of such boxes may be conducted with a judge's warrant. Under Moldovan law, particularly Articles 125 of the CPC and 106² of the Criminal Code, such actions are lawful when reasonable grounds exist.

d) Digital wallets and virtual assets (cryptocurrencies). A recent trend is the use of digital wallets (hot or cold) to store illegally acquired assets. These can be found on physical devices (USB sticks, smartphones, laptops, external drives) or in crypto exchange accounts. Therefore, the investigating officer should be assisted by IT specialists capable of identifying installed apps, saved login data, QR codes, seed phrases, etc.

e) Online platforms and cloud services. An increasing amount of supporting documentation is stored in cloud environments (Google Drive, Dropbox, OneDrive) or in CRM applications and online accounting software. To prevent data destruction, a synchronized digital search is required, including temporary account access blocking, cloning of relevant content, and formal cooperation with service providers through legal channels (for example: MLA, international legal assistance).

f) Smart devices and digital infrastructure. It is essential to search smart devices – mobile phones, smartwatches, smart security systems, routers – which may contain data about suspicious transactions, encryption keys, photos of assets, scanned property documents, or screenshots of banking applications.

To ensure the efficiency and legality of an extended search, it is recommended to explicitly list all targeted locations and media in the search warrant, involve multidisciplinary teams (police officers, prosecutors, IT specialists, financial experts), document findings in real time, and prepare detailed written records with photo and video attachments, while ensuring compliance with personal data protection regulations. Thus, the search becomes a flexible and complex instrument that supports both the public interest in criminal accountability and private interests related to damage recovery.

One of the key conditions for a search to fulfill its role in securing civil action is the rigorous and transparent handling of the discovered assets, so that they can be later monetized for the purpose of restitution. The tactical-procedural stages of this process must comply with the principles of legality, proportionality, and the integrity of evidence.

Prior to seizure, items should be recorded by photographing them in their original position and from multiple angles, video recording with timestamp (especially when large amounts of money, jewelry, or valuable goods are found), and by providing a detailed description in the search report (brand, serial number, color, condition, distinctive features, exact location of discovery). The report should indicate the presence of the owner (or representative), the suspect/accused, and/or the defense attorney if they are present during the search.

This stage is essential to later demonstrate the connection between the seized asset

and the criminal act, and to prevent any suspicion of substitution or damage. Items must be numbered and packaged individually, especially if they are fragile, valuable, or bear biological or substance traces. Seized items should be properly labeled, indicating the case file, date, and place of seizure. They are then attached to the case file [12, p.641].

To enable the use of assets for covering the damage, the physical and legal integrity of the assets must be ensured (safe transport, storage in accordance with standards). Storage should be carried out in specially designated areas (for example: evidence rooms, safes), and detailed records must be maintained in an official register.

In the case of perishable goods or those at risk of deterioration, early liquidation may be ordered through auction or controlled sale, with the proceeds deposited into a bank account managed by the Agency for the Recovery of Criminal Assets.

In complex cases, it is recommended to prepare an inventory table attached to the search report, and detailed photographs should be saved on a digital medium and annexed to the case file. Subsequently, a valuation expert appraisal may be ordered to determine the current value of the seized assets.

An analysis of judicial practice in the Republic of Moldova reveals that search is frequently used in the investigation of serious offenses such as corruption, drug trafficking, human trafficking, economic crimes, and embezzlement of funds. However, surprisingly, in numerous criminal cases, this procedural measure is not effectively correlated with the institution and enforcement of the civil action.

Conclusions. The search, as a forensic tool for securing civil action and potential special confiscation, holds significant potential in the recovery of damages caused by criminal offenses. To fully harness this function, it is necessary to:

– Integrate the objective of protecting patrimonial interests into the tactical planning of the search;

– Provide specialized training for criminal investigation officers in asset valuation;

– Develop practical guidelines on conducting searches in relation to civil action and/or special confiscation;

– Introduce legislative amendments to clarify the dual (evidentiary and reparatory) nature of this procedural measure.

In a society oriented toward restorative justice, the role of the search extends beyond the strictly criminal sphere, becoming an effective instrument for the fair recovery of damages.

This lack of correlation stems primarily from two structural deficiencies in the current criminal process:

1. The absence of a standardized procedure for on-site assessment of material damage during the search, and

2. The insufficient training of criminal investigation bodies in regard to the civil aspects of patrimonial liability, including the identification, documentation, and preservation of assets that may be subject to future claims for compensation.

In current practice, searches are often conducted with a predominant focus on obtaining evidence related to the criminal offense (for example: instruments of the crime, accounting documents, illicit substances), while evidence related to damages remains secondary or unexamined.

This approach significantly reduces the effectiveness of the search as a forensic instrument for ensuring the enforcement of potential civil claims within the criminal pro-

ceedings. Furthermore, in the absence of precise methodological tools, the investigative body may fail to identify in a timely manner relevant assets (real estate, vehicles, bank accounts, cryptocurrencies, works of art, etc.) that could be seized or frozen to cover the damages suffered by the injured party or the state.

Thus, a reconceptualization of the search is needed beyond the strictly criminal framework, and its integration into an interdisciplinary mechanism that includes certified evaluators (for rapid estimation of asset value), financial, accounting, and civil law experts, forensic guides for identifying assets susceptible to extended confiscation. This approach would contribute not only to enhancing the evidentiary efficiency of the search, but also to strengthening the reparatory function of the criminal process, in line with new trends in European law, which emphasize the restitution of damages and the protection of the patrimonial interests of injured parties.

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STRATEGIES FOR PROFILING COUNTERFEIT IDENTITY AND TRAVEL DOCUMENTS: THE EXPERIENCE OF A FRANCE-SWITZERLAND PILOT PROJECT

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Summary

The repeated nature of document fraud and its link with organised criminal groups that produce, sell and/or use fraudulent documents is a challenge for security and the fight against crime. In response, the added value of forensic intelligence is increasingly recognized. Using a forensic profiling method and a dedicated system implemented in Switzerland, document examiners can detect series (i.e., documents that have a common source) of fraudulent documents conveniently and efficiently.

This detection can trigger or guide investigations, support crime intelligence efforts and facilitate inter-jurisdictional cooperation. This study aims to assess the suitability of the forensic profiling system for international purposes and the efficiency of the cross-border series detection method. The forensic profiling system was implemented in France as part of a cross-border pilot project led by the School of Criminal Justice at the University of Lausanne and the French National Police (Division Nationale de Lutte contre la Fraude Documentaire et 'a l'Identite) between July 2019 and May 2020.

Data from the Swiss Police and those from the French Police were compared with other cross-border profiling systems. The study aimed to create operating conditions as close as possible to the real conditions of the profiling systems. The results are extremely positive both quantitatively and qualitatively. They demonstrate the benefit of establishing a systematic exchange of forensic data issued from fraudulent identity document profiling systems between France and Switzerland, let alone between any other countries. The results open a very promising prospect for an operational implementation supported by the police services of both countries and the expansion of exchanges internationally.

Keywords: cross-border crime, forgery, counterfeit, forensic document examination, police cooperation, security.

Introduction. Fraudulent identity and travel documents (hereinafter referred to as DIF) are essential for criminals trying to conceal their identity and illegal activities. Indeed, the DIF facilitates a multitude of serious, organised and transnational forms of crime, such as terrorism, mafia-type activities, trafficking in human beings, migrant smuggling, drug trafficking and money laundering. Usually, documents are mass-produced by the same (same group of) forger(s) [1, p.70-84; 2, p.295-320; 3; 4, p.1-11]. The market for fraudulent documents is punctuated by a small number of organised repeat offenders who are responsible for a disproportionately large number of products for sale [1, p.70-84; 5; 6], although the methods most often used by police and security organisations to combat this criminal problem, suffer from a reactive and case-by-case attitude. Thus, common documents (the same type of fraud (counterfeit, fake, stolen blank, pseudo-document), the same category of documents (passports, identity cards, driver's cards, residence permits or any other type of identity or travel document) and the same country of the document) produced by the same forger or group of forgers have common material characteristics (e.g. displacement of a text, spelling error, asymmetry). Based on these specific charac-

teristics, a document examiner can detect and recognize a series of documents issued from a common manufacturing source. This is known as DIF forensic profiling and allows forensic information to be obtained to better understand and respond to crimes [7, p.618-639]. Based on previous research, an innovative tool has been created to facilitate series detection based on digitized images of comparable quality [8, 74-84; 9; 10].

This online system known as the Interstate Database of Fraudulent Identity Documents (hereinafter referred to as ProDIF-CHE) was developed by the School of Criminal Justice at the University of Lausanne together with the Zakodium society and was implemented in 2017 in Switzerland. For each DIF in the database, the forensic document examiner described forensic characteristics (such as document category, type of fraud, document number, printing techniques, type of substrate or reaction to UV light), confiscation-related information (such as circumstances or presumed nationality of the document holder) and case-related information (a brief description of the event). This tool is combined with an efficient series detection method that was developed and tested in a previous study [6].

This four-step method begins with: 1) entering a DIF database; 2) analyzing it to highlight profile characteristics; 3) comparing the document with other documents; 4) reaching a decision between each comparison stage. This method focuses mainly on forensic features, including those visible on digitized images of DIF. Since some features or a combination of them are only found on documents produced by the same forger or group of forgers (misalignment, misspellings, syntax errors, quality defects, accidental presence of blemishes, etc.), it is suggested that they belong to the same series of DIFDs or, in other words, that they have a common source. This approach has proven successful in Switzerland. The present study aims to assess the relevance of the implementation of the profiling system on an international scale and the effectiveness of the method in detecting cross-border series.

Although ProDIF-CHE and ProDIF-FRA did not start operating at the same time (i.e. April 2017 for ProDIF-CHE and July 2019 for ProDIF-FRA), their operation overlapped. The environment in which the ProDIF-FRA and ProDIF-CHE profiling systems were implemented is different between France and Switzerland. Thus, they are close to real conditions and do not aim to optimise the chances of identifying links between DIFs detected in France and Switzerland.

ProDIF-FRA contains a significant proportion of DIFs stemming from seizures carried out at major international airports in Paris (Roissy-Charles-de-Gaulle and Paris-Orly) or from large-scale investigations carried out in the Paris region or in other parts of the country. For ProDIF-CHE, the documents come from a region that does not have a major international transit airport, Paris (Geneva airport, which mainly serves Europe) and only exceptionally from large-scale investigations. Most of the seizures come from routine street checks and border or administrative controls. Both systems include a certain proportion of DIFs detected in the administrative procedures for the exchange of foreign driving licences. The vast majority of fraudulent documents reported in ProDIF-FRA were not seized in French regions close to the Swiss border. In contrast, most of the documents reported in the ProDIF-CHE system were seized in Swiss states that either border with France or are close to this country.

This difference in the implementation environment influences the category of documents contained in the two systems.

Statistical profiles of the two profiling systems. As of 14 May 2020, ProDIF-FRA contained 434 fraudulent documents and ProDIF-CHE 2143. These were mainly counterfeits (ProDIF-FRA: 93.1 %, ProDIF-CHE: 83.2 %) and forgeries (ProDIF-FRA: 3.5 %, ProDIF-CHE: 13.3 %), other types of DIFs being only marginal.

The French system contained a higher proportion of identity documents (34.1 % compared to 26.2 % in ProDIF-CHE) and passports (27.1 % compared to 12.3 % in ProDIF-CHE), while the Swiss system contained more driving licences (41.0 % compared to 33.3 % in ProDIF-FRA). Travel documents issued to non-nationals, residence permits, visas and other types of documents each accounted for less than 4% of documents in both systems.

In addition, the most prevalent countries of documents seized in Switzerland and France are different, with the exception of the Italian DIF, which is most commonly represented in both systems. About half of the DIFs introduced into the profiling system in both France and Switzerland are part of a series. On the one hand, this means that the DIF market is highly structured. On the other hand, this means that when an operator enters a DIF into the profiling system, he has about a one in two chance of finding links to the documents in the database.

Method for detecting and assessing cross-border series. The relevance and added value of comparing Franco-Swiss data on the DIF profile were first assessed quantitatively. In order to detect cross-border series, the material characteristics of the documents are compared, such as images, printing techniques, defects or imitation of security features.

In order to compare the DIFs of the two PRODIF-FRA and ProDIF-CHE systems in a structured and efficient way, a working method was developed (in order to detect the cross-referencing of cross-border series between the DIFs in the two databases). From the second database of Indeed, the description of the series made by users provides the anchor points (or specific characteristics) (e.g. spelling mistakes, syntax errors, defects in the imitation of security elements) that will allow comparison in a targeted and systematic way. In this respect, the sequence of comparison steps has been defined as follows:

• Step 1: Comparison of the PRODIF-FRA series with those of Pro-DIF-CHE.

• Step 2: Comparison of orphan series from PRODIF-FRA with the isolated documents from ProDIF-CHE. An orphan series is a series that has not found a match in the other database after the series comparison stage and therefore remains to be compared with the isolated documents in the other database.

• Step 3: Comparison of the orphan series from ProDIF-CHE with isolated documents from PRODIF-FRA.

• Step 4: Comparison of the isolated documents from PRODIF-FRA with those from ProDIF-CHE remaining after step 3.

Although the above process theoretically detects all the links between the two systems, this is not completely true in practice. Indeed, if a document with the characteristics of a series existing within the same system is not assigned to the latter, the link will remain undetected. However, this situation shapes what can happen in an operational environment and therefore leads to realistic rather than artificially optimized results.

A first operator made the comparisons following the stages of the working method. A second operator carried out an independent and targeted 'quality control' inspired by the Analysis, Comparison, Evaluation-Verification (ACE-V) process [11; 12; 13]. This stage can take the form of a discussion if the first operator has doubts about a possible match. The verification was not carried out exhaustively and completely blindly for reasons of

efficiency. By doing so, there was a risk of missing links (false negatives), but the addition of artificial links (false positives) was avoided. In this way, the results were not artificially optimized and were closer to real-life operations.

In addition to the quantitative evaluation, a qualitative assessment of the relevance and added value of cross-comparisons between ProDIF systems was carried out. To this end, two operators selected and analysed cross-border series to highlight their contributions to crime investigations and information.

Some problems arose in the comparisons made in this study. First of all, it seems that some series were not described in the first. When a user is faced with such a series, he has no choice but to analyze and compare all the documents in the series to highlight the anchoring characteristics of the series. Only then can it proceed to comparisons with the document of interest. On the other hand, when a series is described, users may also need to analyze and compare the documents in the series. Indeed, the quality of the descriptions is just as important. For example, we should not limit ourselves to describing features that are only visible under UV light or on the inner pages of passports. Where these elements are necessary for the description of the series, it should be ensured that they are coherently integrated into the forensic profiling system so that they are comparable through the data available in the system. It is therefore advisable to focus on the features that are visible in the digitized images, making them available to all database users. In conclusion, time and effort should be invested in describing the series so as not to disadvantage future comparisons. On the other hand, the time spent on a better description of the series saves much more time for all the other operators who will make subsequent comparisons.

Another problem is encountered when only two documents share common characteristics. In these cases, users do not always create a series, while it is essential to create a series when two documents have similar characteristics. Indeed, these series of two DTIs, the value of which in terms of criminal investigation and information may sometimes seem limited, become significant because they facilitate subsequent comparisons, on the one hand, and, on the other, lead to transnational links that can positively influence the assessment of interest in investigations and information. The systematic creation of these dyads ensures that links are not omitted. If documents A and B are similar, but operators do not link them in the profiling system, it will be more difficult to identify all links once a third document similar to C is entered into the system, as this requires detecting links A-B, A-C, and B-C at the same time.

Finally, these findings are all the more important when considering the pooling of more than two forensic profiling systems. It stresses the importance of using the same profiling doctrine between operators in the same country and, even more so, in both countries. This ensures optimal comparability of the respective data and thus the possibility of detecting series under the best conditions.

Beyond the large number of transnational series detected, the qualitative question is whether at least some of these series may be of investigative interest, either for operational or tactical information. During the comparisons, several examples of series exemplified the operational contributions that can be expected from international cross-comparisons between ProDIF systems: highlighting the international dimension of a DIF network; suggesting an exchange between French and Swiss law enforcement agencies to raise awareness of a large-scale series and trigger cross-border cooperation; estab-

lishing a link between a counterfeit manufacturing workshop and production in several countries; exchanging data on investigations to allow investigations to progress in one or both countries. These examples are briefly presented below, as the authors did not have access to all the circumstantial information. It should be noted that the agreement establishing the cross-border pilot project was not intended for the exchange of information or data on investigations.

Counterfeit French national identity cards. A series of three documents detected in ProDIF-FRA was compared with two series in the ProDIF-CHE system, consisting of 17 and 6 documents, respectively. These three series were of investigative interest both in France, where a potential forger was arrested and another 22 cases that were not reported in ProDIF-FRA were also subsequently associated with this series, and in Switzerland, where the documents were used by criminals in North Africa to commit payment fraud. The links identified between ProDIF-FRA and ProDIF-CHE could have allowed for a real-time exchange of investigative information and a rapid understanding of the international nature of the criminal network in question. In addition to the link between the French and Swiss series, an international series alert, with a description of the series' anchoring characteristics, made it possible to establish a link between 350 additional documents seized in eight European countries.

Counterfeit Italian residence permits. A Swiss series containing 158 documents was linked to two series of ProDIF-FRA, one of 9 documents and the other of 3. The Swiss series has been the subject of substantial investigations, which have led to links to more than 1,000 cases across Europe and have made it possible to locate the source of manufacture in the Naples City in Italy. Some cases were related to internationally organized prostitution. Real-time detection of the relationship between ProDIF-FRA and ProDIF-CHE would have allowed Swiss and French investigators to connect and confront their respective forensic information and investigative elements, which could have led to a joint investigation team that would also include other countries.

As part of an investigation, the French border police dismantled a workshop that produced false documents in the Paris region. Comparison of the documents found in the workshop during the search with ProDIF-FRA revealed three series, one of which contained forged Italian identity cards, and an initial link to an earlier French case. Subsequent comparison of these three series with ProDIF-CHE revealed in 5 minutes a link to a series consisting of two counterfeit Italian identity cards confiscated in two jurisdictions in Switzerland.

The documents seized in France and Switzerland had many forensic characteristics in common, including the same barcode and a specific spelling mistake in the data pre-written as part of the document. This example demonstrates the speed with which documents can be compared between the respective national forensic systems, in particular through serial descriptions, thus facilitating and accelerating international police cooperation.

A series of 20 forged Slovenian passports detected in ProDIF-CHE was linked to two series detected in France with the help of PRODIF-FRA, involving 10 and 4 documents respectively. All the documents came from the same network in the Balkans. More recently, there have been reports that Germany has detected more than a hundred cases with the same characteristics as these Franco-Swiss series.

Counterfeit driver's licenses from the Democratic Republic of Congo. Switzerland

has been concerned about a series of 21 counterfeit Congolese driver's licenses detected through ProDIF-CHE. On this basis, the Swiss authorities have carried out investigative actions to track down the organised crime group behind this action. The comparison between ProDIF-CHE and PRODIF-FRA established a link to a case in France, which indicates that the network was active internationally, suggesting that Swiss police officers share their information with their French counterparts.

Conclusion. Through the study that was the basis of this article, a cross-border pilot project was created to assess the relevance of forensic profiling of fraudulent identity and travel documents (DIF) at international level. Cross-comparisons between forensic profiling systems implemented in France and Switzerland, known as ProDIF-FRA and ProDIF-CHE, were studied using quantitative and qualitative indicators. Also, the efficiency of the forensic profiling method proposed by Lugon Moulin et al.has [14, 610-620] been assessed in the context of the detection of cross-border series.

In addition to the ProDIF system operating in Switzerland, the School of Criminal Justice at the University of Lausanne has made this forensic profiling system (ProDIF-FRA) available to the Division Nationale de Lutte contre la Fraude Documentaire et a' l'Identite ´of the French National Police. DIFs seized in France between July 2019 and May 2020 were supplemented with ProDIF-FRA as part of this cross-border pilot project. The documents seized were mainly forgeries and forgeries of different categories of documents (e.g. identity documents, driving licenses, passports) and countries. The same applies to the 2143 documents included in the Swiss forensic profiling system, since its operational launch in 2017. This pilot phase aimed to model realistic operating conditions for cross-border comparisons, which were not aimed at artificially optimising or exaggerating the chances of detecting cross-border links. Data from the two forensic profiling systems were systematically compared to identify cross-border series. The comparisons were made using a four-step comparison method, developed specifically for this study, and by applying a peer-reviewed forensic profiling method. The results were extremely positive both quantitatively and qualitatively. 19% of profiled documents in Switzerland and France are linked to documents from the other country, in addition to the 50% of documents linked nationally in both Switzerland and France. Thus, 33 Franco-Swiss series could be detected, covering a total of 484 documents. These links and series indicate the existence of documents from a common source, namely the same criminal network and/or the same forgery shop.

Comparisons reveal cross-border links for both larger and smaller series and a priori isolated documents. The transnational links extended both the French and Swiss series.

Unexpectedly, this approach also makes it possible to identify series that have not been detected in national data. These series are highlighted by capitalizing on the series descriptions and anchoring features available in the forensic profiling system in the other country, revealing a symbiotic effect.

The comparisons also highlight that the choice and quality of descriptions and illustrations of safety features play a key role in the ability to detect links. This underlines the importance of strict adherence to the forensic profiling method [11].

The concrete examples present the transnational series detected that are to be of investigative interest and forensic information. On the other hand, cases or series with a low a priori potential for investigation become more interesting after the discovery of transnational links. These elements demonstrate that the cross-border forensic profile of

the DIF is likely to feed into and facilitate international police cooperation.

Our findings and observations resonate with those in other areas of forensic science, such as, for example, ballistic data, where pilots and prototypes also pave the way for a cross-border exchange of forensic data at European level [15; 16, p.237-242; 17, p.384-393].

In conclusion, the results obtained underline the enormous potential of the ProDIF forensic profiling system at the transnational level between the two countries. There is every indication that this conclusion will be valid a fortiori with a larger number of participating countries. This perspective underpins the ISF ProDIF project, funded by the Internal Security Fund – Police of the European Commission (ISFP-2020 project - AGPOLCOP No.101036247). The objective of the project is to develop the forensic profiling system and implement it among law enforcement agencies across Europe.

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THEORETICAL AND PRACTICAL CONSIDERATIONS REGARDING THE SUBJECTIVE CONSTITUTIVE ELEMENTS OF ORGANIZED CRIME OFFENSES IN THE CRIMINAL LAW OF ROMANIA AND THE REPUBLIC OF MOLDOVA

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Summary

This paper provides a comprehensive approach to the subjective constitutive elements of organized crime offenses, employing specialized legal terminology and highlighting the interpretative and evidentiary challenges arising from the complexity of the phenomenon. By integrating contemporary doctrinal perspectives and relevant case law, the article proposes concrete directions for the modernization of the legislative framework and the optimization of criminal investigation procedures, thereby contributing to the increased efficiency of combating organized crime within the context of a dynamic and interconnected legal system.

Keywords: organized crime, subjective elements, criminal intent, culpability, criminal evidence

Introduction. Organized crime constitutes a complex phenomenon which endangers fundamental social values in both Romania and the Republic of Moldova [1; 4]. It involves a criminal structure that acts in a hierarchical and coordinated manner, with the aim of obtaining material benefits or illicit influence, through a series of serious offenses committed systematically and in a planned fashion [2; 7]. In order to effectively counter this phenomenon, well-defined legislative tools and a coherent interpretation of the constitutive elements of organized crime offenses are essential [4; 6].

This synthesis aims to provide an integrated analysis of the theoretical and practical aspects regarding the subjective constitutive elements of organized crime offenses, taking into account the criminal law regulations of both Romania and the Republic of Moldova [5; 6]. In the Republic of Moldova, the offense of creating or leading a criminal organization is governed by Article 284 of the Criminal Code. It also highlights the specific characteristics of the active subject in the offense of creating or leading a criminal organization, as addressed in the legislation and doctrinal sources of both jurisdictions [15].

The essential mental elements on the basis of which the existence of the prejudicial degree specific to a criminal act is determined—and, consequently, the presence or absence of the constitutive elements of the offense—can be inferred from the corroboration of Articles 15 and 113 of the Criminal Code. In the context of Romanian legislation, the offense of establishing an organized criminal group is regulated under Article 367 of the Criminal Code, which outlines the framework within which such a hierarchical and coordinated structure may be classified from a criminal law perspective.

Although specific norms are provided in both legal systems, with regard to the signs

of the subjective element of the offense, there is still a lack of in-depth research. This circumstance may lead to erroneous interpretations and, implicitly, to the incorrect application of the legal norm, as emphasized in certain doctrinal views [15, pp.84-89].

1. The general framework of subjective elements in organized crime.

1.1. The relevance of the subjective element in the qualification of organized crime offenses. In criminal doctrine [1; 2; 8], it has been established that the subjective element – expressed through the concrete form of guilt – constitutes the essential element upon which criminal liability is based, also determining the socially dangerous character of the act and, implicitly, the existence or nonexistence of the offense. In the case of offenses related to organized crime, it has been noted that direct intent is recognized, as a rule, as the form of guilt, since the commission of such acts is conditioned by thorough planning, hierarchical structuring, and persistent coordination of illicit activities [4; 9].

Such views are found in both legal systems (Romanian and Moldovan), which seek to criminalize association for the commission of serious offenses [5; 6]. In Romania, the central regulation is contained in Article 367 of the Criminal Code concerning the establishment of an organized criminal group, whereas in the Republic of Moldova, Article 284 of the Criminal Code addresses the creation, organization, or leadership of a criminal organization.

1.2. Definition of subjective elements: motive and purpose. It has also been emphasized in the doctrine that the criminal motive – understood as the internal impulse that determines illicit conduct – has been circumscribed, in the case of organized crime, almost exclusively to pecuniary considerations. This is because it has been observed that the main objective lies in obtaining substantial material profits or exercising control over the underground economy [4; 9].

From this perspective, the criminal purpose, viewed as the external and objective finality of the action, has acquired a distinct legal value, generally reflecting the desire to consolidate the group's influence over illicit markets, to monopolize clandestine financial flows, and to ensure the continuity of the criminal structure through the reinvestment of illegal profits [2; 7].

The examination of the evidence capable of demonstrating these psychological motivations has been considered particularly demanding, given that criminal networks have been characterized by a high degree of professionalization and adaptability to contemporary normative and technological exigencies. It has been noted that, in order to conceal the origin of assets, transnational money laundering schemes have been used, passing through jurisdictions with opaque fiscal regimes. Internal communication within these organizations has often been conducted via encrypted channels or ephemeral messaging systems, designed to prevent subsequent data recovery [4; 12].

In jurisprudence, it has been found that, in order to establish the motive and purpose, it was necessary to resort to special investigative measures: electronic communications interception, real-time financial surveillance, forensic audits of financial circuits, infiltration of undercover agents, and the establishment of joint investigative teams with competent foreign authorities. Through these instruments, it was possible to corroborate technical data with witness statements and document analysis, thus providing the evidentiary foundation required for proving the subjective element in court. It has also been held that the absence of such corroborating evidence inevitably leads to the impossibility of proving qualified intent and, consequently, to the inability to establish criminal liability for the offense of establishing or leading a criminal organization.

2. Introductory notions regarding the active subject of organized crime offenses. In

the legal literature [1; 2; 8], the view has been established whereby the quality of active subject of the offense is attributed to the entity to which the commission of the conduct typified by the incriminating norm has been imputed. In Romanian and Moldovan criminal law, it has been held that, as a general rule, this capacity may be attributed to any natural person who satisfies the general conditions of criminal liability—namely, the existence of discernment and the attainment of the minimum age prescribed by law [5; 6; 9].

However, under the influence of European trends aimed at extending criminal liability beyond the individual – crystallized, inter alia, in Article 5 of Council Framework Decision 2008/841/JHA [17] and in Article 6 of Directive (EU) 2017/1371 (PIF Directive) [18] – the principle of criminal liability of legal persons for the offense of establishing, joining, or supporting an organized criminal group has been enshrined in both Romanian legislation (Articles 135 and 367 (7) of the Criminal Code) and that of the Republic of Moldova (Articles 21 and 284 (3) of the Criminal Code).

It has been stipulated, therefore, that any legal entity, with the exception of public authorities, may be held criminally liable if it is established that the act was committed in its interest or for its benefit, through the decision or with the approval of its governing bodies or of individuals exercising de facto control over its activities [6; 10; 23; 24].

The doctrine has pointed out that the inclusion of legal persons as active subjects of the offense of establishing an organized criminal group has been justified by the need to fill legislative gaps exploited by economic entities used as vehicles for the concealment of criminal proceeds and for the financing of illicit operations. This extension has facilitated the application of extended confiscation of assets and the imposition of dissuasive pecuniary sanctions, deemed indispensable for deterring business-related criminality and for neutralizing corporate structures involved in organized crime.

Furthermore, the case law of the High Court of Cassation and Justice (Romania) (Criminal Decision No.566/2018) [19] confirmed the possibility of engaging the criminal liability of commercial companies under Article 367 of the Criminal Code, emphasizing that, by its nature, the offense of organized criminal group may be committed "through the decision-making acts of the statutory bodies of the legal entity, where such acts are directed toward achieving the criminal purpose. "The Supreme Court of Justice of the Republic of Moldova, through Decision No.41r211/2021 [20], has held that a limited liability company may be sanctioned for the creation of a criminal structure if the involvement of its management bodies in the design and coordination of illicit activities has been proven.

Accordingly, by embracing the criminal liability of legal persons, the normative framework for combating organized crime has been strengthened, allowing for the direct implication of economic entities involved in such conduct, alongside the natural persons who direct them. This dual liability generates a more effective penal response and diminishes the capacity of criminal networks to recycle illicit profits into the lawful economy.

2.1. Responsibility and Minimum Age. According to the provisions enshrined in the Criminal Codes of Romania and the Republic of Moldova [5; 6], the requirement has been consecrated that the existence of criminal liability must be primarily conditioned by the verification of the active subject's criminal responsibility. In legal doctrine, the concept of responsibility has been defined, under Moldovan law, as "the psychological state of the person who is recognized as having the capacity to be aware of the illicit and prejudicial nature of their conduct, as well as the aptitude to exercise free will and to direct their actions in accordance with this awareness" [9; 6].

Therefore, it has been established that the absence of discernment, whether per-

manent or existing at the time of the act, leads per se, to the removal of criminal liability.

The legal regime applicable to minors has been configured differently within the two normative systems. Thus, in the Republic of Moldova, it is provided that individuals who have not reached the age of 14 cannot be held criminally liable, in view of their inability to assess the consequences of their conduct. However, the legislator has permitted the engagement of criminal liability for minors who have attained the age of 14 in the case of exceptionally serious offenses, including the creation or leadership of a criminal organization, on the rationale that such a psychological maturity threshold suffices to allow comprehension of the heightened social danger posed by such actions [10].

In Romanian criminal law, the general rule has been established that criminal liability becomes applicable only upon reaching the age of 16. In the 14-16 age range, liability may be engaged only if actual discernment at the time of the offense is proven, with the burden of proof resting on the judicial authorities [5; 13; 14].

Thus, it is observed that, in contrast to the Moldovan solution, the Romanian regulation institutes a rebuttable presumption of irresponsibility for minors within this age range, which may be overturned through conclusive evidence attesting to their capacity for understanding the implications of their conduct.

3. *Specific features of the offenses concerning the creation or leadership of a criminal organization.*

3.1. *The special active subject*. In comparative criminal legislation, namely Article 367 of the Romanian Criminal Code and Article 284 of the Criminal Code of the Republic of Moldova, the normative focus is placed on the active subject to whom is imputed the initiation, organization, leadership, or support in the structuring of an organized criminal group. The Moldovan text expressly enshrines the hypothesis of leading a "criminal organization", thereby placing additional emphasis on the pivotal role of the leader or organizer in the architecture of associative criminality. It has thus been held that criminal conduct acquires legal relevance not only through the material acts of commission, but also through the capacity to strategically coordinate and command the resources of the group.

Specialized studies by Gribincea and Cazacicov [15, pp.84-86] have shown that the precise delimitation of the active subject of the offense of creating or leading a criminal organization is of heightened practical significance, since the activation of criminal liability against the leader is conditioned by proof, beyond a reasonable doubt, of awareness of the common criminal purpose, knowledge of the illicit activities undertaken by other members, and effective contribution to the formation, structuring, and perpetuation of the criminal network.

In the doctrine, it has been underlined that, in order to establish the quality of organizer, it is necessary to demonstrate genuine decision-making ascendancy over the group, manifested through the assignment of tasks, distribution of roles, management of funds, and adoption of protective measures against law enforcement intrusion. Thus, the subjective element materializes as qualified direct intent, characterized by acceptance of all illicit consequences deriving from the operation of the criminal entity, while the objective element is defined by conduct involving orchestration and oversight of the group's operational mechanisms.

3.2. *Members of criminal organizations: differentiated criminal liability*. A particularly relevant aspect of judicial practice concerns the clear distinction between categories of participants in a criminal organization, as regards the scope of their criminal liability.

Thus, under the relevant provisions of both Romanian and Moldovan legislation (Article 367 of the Romanian Criminal Code and Article 284 of the Moldovan Criminal Code), a distinction is made between:

The organizer or leader of a criminal organization, who is generally deemed liable for the entirety of the criminal acts committed by the organization, insofar as such acts were committed either in the direct interest of the organization, or at their order or under their coordination [6; 9; 10];

Ordinary members of the organization, whose criminal liability is strictly limited to the offenses in which they were actively involved, whether in the preparatory, execution, or support stages [6], [10].

In the scholarly literature and in national jurisprudence, a presumption has been highlighted regarding the active and continuous involvement of leaders in all relevant aspects of the organization's illicit operations, which justifies the extension of their liability [4; 15, pp.88]. This conception is grounded in the central and decision-making role of the organization's leader, who, by the very nature of their position, exerts control over subordinate members and over the general strategy of the criminal group. Within this framework, a form of functional-objective liability emerges, based on the capacity for command and systemic influence, rather than on direct involvement in every material act constituting the criminal conduct.

3.3. *Voluntary withdrawal and its limits*. The criminal provisions applicable in Romania and the Republic of Moldova provide, under certain conditions, the possibility of excluding criminal liability in cases where individuals voluntarily withdraw from participation in an organized criminal structure and actively contribute to the prevention of further offenses or to the identification of those already committed [6; 9; 15, pp.84-86]. However, Moldovan doctrinal analysis emphasizes that such a benefit is generally not extended to leaders or organizers of the group, whose role in the criminal infrastructure is considered irreplaceable.

The rationale behind this distinction lies in the dominant position of the organizer within the illicit entity, their active and decision-making involvement in the unfolding of criminal activities, and their essential role in maintaining and consolidating the organization's functioning. Consequently, it is considered that simple voluntary withdrawal is not sufficient to justify the exclusion of liability in the case of such individuals. Instead, solid probative elements must also be produced, demonstrating that the subject not only ceased participation but also acted decisively to dismantle the organization or to interrupt its criminal activity.

These doctrinal positions have found reflection in both national jurisprudences, with courts requiring a heightened evidentiary threshold in order to accept the hypothesis of effective dissociation from the criminal milieu, particularly in cases where the subject held command functions or exercised informal leadership over substructures of the organization. Thus, voluntary withdrawal is conceptualized as a complex legal mechanism that can only operate in favor of those who, in addition to abandoning the illicit structure, have taken actions that substantially contribute to the suppression of its criminal aims.

4. *Evidentiary challenges and special investigation methods.*

4.1. *Challenges in obtaining evidence regarding intent and participation.* The phenomenon of organized crime is characterized by a high degree of operational complexity, manifested through the use of sophisticated and adaptive methods of action. This reality compels judicial authorities to necessarily resort to special investigative techniques, legally enshrined and validated through judicial practice. Among such tools are included:

communications interception, surveillance of banking transactions in real time, analysis of encrypted or ephemeral digital communications, undercover operations, and the deployment of joint investigation teams in cross-border cases [6; 9; 15].

The doctrinal literature has stressed that, in such contexts, the subjective elements –particularly intent, motive, and common criminal purpose – are especially difficult to prove, given the deliberate fragmentation of criminal activities and the strategic use of legal business fronts. For this reason, the evidentiary process must be reinforced through the systematic integration of technical data (communications metadata, digital forensics, transactional analysis) with testimonial elements (statements from collaborators, protected witnesses, or law enforcement agents) [4; 12].

Romanian jurisprudence, as exemplified by the High Court of Cassation and Justice (Decision No.1019/2017) [19], has consistently emphasized that judicial bodies must carefully assess the coherence and corroboration of all indirect evidence, especially when the defendant held leadership roles or coordinated logistical or financial aspects of the organization. Similarly, the Supreme Court of Justice of the Republic of Moldova has recognized the centrality of electronic surveillance and undercover operations in establishing the subjective elements of participation in organized crime.

4.2. *Interaction with international norms*. Both Romania and the Republic of Moldova have ratified the United Nations Convention against Transnational Organized Crime (commonly referred to as the Palermo Convention) [7], an international instrument which recommends that signatory states adopt distinct criminalization provisions regarding participation in a criminal organization, expressly encompassing both acts of creation and leadership of such structures [4; 7]. In Romanian criminal law, this recommendation was implemented through Article 367 of the Criminal Code (Law No.286/2009) [5], and in the Moldovan legal system through the introduction of Article 284 of the Criminal Code (Law No.985-XIV/2002) [6], both norms explicitly regulating the legal framework applicable to organized crime offenses.

5. *Proposals for legislative and practical improvement*.

5.1. *Separate incrimination of participation*. In the study authored by Gribincea and Cazacicov [15], the necessity of introducing a separate criminal offense for participation in a criminal organization, as distinct from its leadership or initiation, has been emphasized. The legal systems of most European states and the provisions of international conventions advocate for a comprehensive legal framework that explicitly criminalizes active participation in group criminal activities, even when the person involved does not hold a leadership position [4; 7].

5.2. *Witness protection and investment in investigative tools*. Given the significant intimidation factors and the considerable financial resources often available to criminal networks, it is imperative that the justice systems of both states develop effective witness protection programs [12]. Moreover, continuous investments are recommended in the professional training of prosecutors, police officers, and judges, as well as in the technological infrastructure required to intercept and decipher modern forms of illicit communication [9; 15].

5.3. *Terminological unification and regional cooperation*. The lack of a fully harmonized terminology (e.g., “organized criminal group” vs. “criminal organization”) may generate practical difficulties, particularly in the context of cross-border investigations and mutual legal assistance. Therefore, it is suggested that efforts be intensified toward aligning legal language and definitions, possibly by adopting a common regional glossary and enhancing cooperation mechanisms through bilateral treaties and participation in joint

investigation teams under EUROJUST and EUROPOL mandates.

The subjective elements characterizing offenses associated with organized criminality – particularly direct intent, motive, and criminal purpose – constitute fundamental legal criteria in the qualification of facts and, consequently, in delineating the scope of criminal liability [9]. The subjective component is deemed indispensable in revealing the socially dangerous character of the conduct, and its assessment enables judicial bodies to distinguish between voluntary and conscious participation in a criminal structure and merely incidental or passive involvement. Within the same analytical context, the active subject of the offense – whether as principal perpetrator, leader, or contributing member – is identified based on criteria such as legal capacity, discernment, the attainment of the minimum age threshold, and the extent of actual involvement in the criminal organization's operational architecture [6; 10].

Conclusions. The subjective elements characterizing offenses associated with organized criminality – particularly direct intent, motive, and criminal purpose – constitute fundamental legal criteria in the qualification of facts and, consequently, in delineating the scope of criminal liability [9]. The subjective component is deemed indispensable in revealing the socially dangerous character of the conduct, and its assessment enables judicial bodies to distinguish between voluntary and conscious participation in a criminal structure and merely incidental or passive involvement. Within the same analytical context, the active subject of the offense – whether as principal perpetrator, leader, or contributing member – is identified based on criteria such as legal capacity, discernment, the attainment of the minimum age threshold, and the extent of actual involvement in the criminal organization's operational architecture [6; 10].

By comparing and integrating doctrinal perspectives with the legislative provisions in force in Romania and the Republic of Moldova, several convergent lines of interpretation have been identified:

– The leader or organizer of a criminal structure is held criminally liable for all offenses committed in the name or interest of the entity they lead, since it is presumed that they exercise effective control and possess knowledge of the activities carried out [6; 15];

– Ordinary members of the criminal organization incur criminal liability only for those acts in whose preparation, commission, or facilitation they directly participated [6; 10];

– The lowering of the age of criminal responsibility to the threshold of 14 years (in the Republic of Moldova), with regard to exceptionally serious offenses such as the creation or leadership of a criminal organization, is considered doctrinally justified by the heightened degree of social danger these acts entail [10];

– The necessity of establishing a distinct incrimination of subordinate participation in the criminal organization is emphasized, along with the reinforcement of witness protection measures and the safeguarding of justice collaborators [15].

Both legal systems aim to implement the commitments assumed under the Palermo Convention, ratified by Romania and the Republic of Moldova, which stipulates the separate sanctioning of participation in any form within a criminal organization [7]. Nevertheless, from the analysis of existing regulations and judicial practice, it emerges that joint legislative adjustments are required, including: the harmonization of legal terminology, the enhancement of evidentiary techniques employed in complex cases, and the institution of additional safeguards for the protection of vulnerable individuals involved in proceedings [12; 15].

Therefore, a coordinated and coherent approach to the subjective and institutional

components of criminal liability, within the framework of combating organized crime, may significantly contribute to strengthening the effectiveness of both substantive and procedural criminal law mechanisms in the two states.

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CRITICAL OPINION ON THE ESTABLISHMENT OF THE PROSECUTOR'S OFFICE FOR ANTI-CORRUPTION AND COMBATING ORGANIZED CRIME

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Summary

The present article is dedicated to the legislative initiative for the unification of the Anti-Corruption Prosecutor's Office (PA) and the Prosecutor's Office for Combating Organized Crime and Special Causes (PCCOCS) into a single structure.

This study represents an approach to the necessity of reforming specialized Prosecutors' Offices through unification and the establishment of a unified structure from the perspective of creating such a subdivision, the opportunity of the amendments approved at the level of the two institutions, the usefulness of establishing a specialized institution, the challenges encountered, and the impact on the activity of the Prosecutor's Office system.

***Keywords*: Anti-Corruption Prosecutor's Office, Prosecutor's Office for Combating Organized Crime and Special Causes, competence, unification, specialized institution.**

Introduction. The fight against the criminal phenomenon in general and especially against corruption and organized crime, the methods of committing which evolve from one year to the next, require a prompt but above all adequate reaction from the law enforcement agencies, especially from the Prosecutor's Office which has the role not only of organizing and supervising the fight against this scourge but also of combating it directly.

It is true that an adequate response to crime is possible only from a fortified system that corresponds to current trends. That is why the reform of law enforcement agencies in general and the Prosecutor's Office in particular is not only a necessity but also a continuous process, on the quality of which the efficiency of the fight against this dangerous scourge for modern society depends. Despite the permanent need to reform the Prosecutor's Office system, changes at its level cannot and should not be of a formal nature. Or, the fight against the criminal phenomenon and its effective combat directly and immediately depend on their quality.

Methods and materials applied. Given the level of approach to the respective subject, when developing this article we were guided by the principle of objectivity, in other

words, the events were analyzed impartially and without subjectivity in presentation and interpretation. When using documentary sources, we applied the principle of ranking sources, so that international instruments, the Constitution of the Republic of Moldova and the provisions of the Criminal Procedure Code, had a special value in relation to other organic laws. Additionally, the principle of dialectics was applied to the analysis of processes, events, facts, in the sequence of their procedure, revealing their causes and effects.

Discussions and results obtained. According to the Constitution of the Republic of Moldova [2] and Law No.3 of 25.02.2016 on the Prosecutor's Office "The Prosecutor's Office is an autonomous public institution within the judicial authority that contributes to the administration of justice, the protection of the rights, freedoms and legitimate interests of the individual, society and the state through criminal proceedings and other procedures provided for by law" [3].

The evolution of social relations, in the context of the democratization of Moldovan society and the need to align with European values, imposes the obligation to adapt and reform the judiciary, so that it can firmly respond to attacks against the rights and freedoms of man, society and the state. However, this goal can only be achieved in the context of a process of continuous reform in this field.

The process of *reforming justice* in general, and the Prosecutor's Office system in particular, does not involve making formal changes, but rather effective changes both at the level of the entire system and qualitative changes to the process itself.

So, reform does not imply any change but a change for the better [4, p.1652], these changes must aim to connect the field to the system of European values and represent in themselves qualitative changes that rationalize the system, improve it and make it more loyal for those who benefit from its services and more equitable for those who bear the consequences of the act of justice.

In this context, the process of reforming the Prosecutor's Office system was also initiated. A process that has begun in 2011 and continues in the present.

Thus, on November 25, 2011, the Parliament of the Republic of Moldova, through Law No.231 [5], adopted the Justice Sector Reform Strategy for 2011-2016, the general objective of which is to build an accessible, efficient, independent, transparent, professional and socially responsible justice sector that meets European standards, ensures the rule of law and respect for human rights, and contributes to ensuring society's trust in the justice system" [6, p.2].

According to that strategy, it is noted that there is a need to carry out interventions in order to confer real internal independence on prosecutors, but most importantly, for the first time, the opportunity to request specialized prosecutors' offices was discussed [5].

The process of reforming the Prosecutor's Office took place with the adoption in 2016 of Law No.3 on the Prosecutor's Office [3], which focused on developing sustainability, ensuring the independence, accountability and transparency of the institution [8, p.16].

"At the same time, efforts were directed towards ensuring accessibility, increasing the efficiency and professionalism of prosecutors, in line with European standards and practices, promoting the rule of law in the Republic of Moldova and ensuring respect for human rights" [8, p.16].

Namely, in order to achieve these objectives, the Strategic Development Plan of the

Prosecutor's Office for 2016-2020 was approved [8, p.16].

"In the context of ensuring the continuity of the implementation of the Prosecutor's Office Reform, in 2017 several departmental acts necessary for regulating their organization and functioning were reviewed and adopted. In the reporting year, the aspect of prosecutor specialization was one of the priorities for the Prosecutor's Office, being extremely necessary to ensure good performance in accordance with international standards and to the extent of citizens' expectations. In this regard, simultaneously with the development of the capacities of the Anti-Corruption Prosecutor's Office, the Prosecutor's Office for Combating Organized Crime and Special Cases was created. Moreover, in 2017 in the context of developing the capacities of specialized Prosecutors' Offices, the mechanism for seconding criminal investigation and investigation officers to these institutions was successfully implemented" [8, p.16].

The immediately following period was marked rather by the internal organization and streamlining of the Prosecutor's Office's activity with the following qualitative changes being introduced and promoted: the statute of the Prosecutor General's Office, which was criticized for inefficiency and the accumulation of the attributions of exercising criminal prosecution with those of implementing policies and unifying practice, was revised. As a consequence of the change in the structure and the revision of the competence, prosecutors within the Prosecutor General's Office, as a rule, no longer carry out criminal prosecution, their activity being oriented towards the development and implementation of policies and the unification of practice, with the provision of methodological assistance to other prosecutors [8, p.16].

"During 2019, the Prosecutor's Office was effectively integrated into the process of implementing state policy documents in major areas, such as: respecting human rights, combating money laundering and terrorist financing, preventing and combating corruption, but also organized crime, etc." [8, p.16].

However, during the reference period, the activity of the Prosecutor's Office "...was also marked by the events that took place in society and in the political environment. The resignation of the Prosecutor General and the establishment of the interim of this position, the establishment of the pre-selection mechanism for candidates for the position of General Prosecutor, as well as the establishment of a new mechanism for the dismissal of the General Prosecutor were just some of the challenges that the Prosecutor's Office faced during the reporting period. It should be noted that, during 2019 the leadership of the Prosecutor's Office was successively taken over by 3 teams of managers, which inevitably influenced to some extent the activity of the institution's employees" [8, p.20].

Certainly, one of the most resounding changes at the level of the Prosecutor's Office was the arrival in 2022, at the head of the Anti-Corruption Prosecutor's Office (PA), of Ms. Veronica Dragalin, who won the competition over 4 other candidates, being selected by the Superior Council of Prosecutors (SCP) [9], and, upon their proposal, appointed to office by the order of the Acting General Prosecutor of that date [10].

The appointment of this candidate to the head of the PA was conditioned by a number of factors. The most important being determined by the fact that the candidate comes from outside the Prosecutor's Office system, and especially from outside the Republic of Moldova which led to the belief that he does not have all the "deficiencies" and "shortcomings" which were presumed to be inherent in local candidates.

Moreover, the candidate came as an exponent of one of the most democratic and

progressive legal systems in the world.

It is worth noting that during that period, the Anticorruption Prosecutor's Office also supervised and led the criminal prosecution within the National Anticorruption Center (NAC), which, moreover, also provided analytical and informational support to the PA, as well as to other authorities at their request [11, p.12].

The appointment of a new chief prosecutor at the PA was supposed to consolidate and streamline the efforts of the subjects empowered with this right in the fight against the scourge of corruption. However, already in the first year of activity, significant disagreements emerged between the PA and the NAC. A conflict which resulted in mutual accusations between representatives of the two institutions.

Even though it seemed that the conflict had been overcome [12], on 31.07.2023 the legislature decided to intervene with new amendments to the criminal procedure law [13], which not only delimited the material competence of the NAC and the PA but, most importantly, the latter was deprived of the right to lead criminal prosecution within the Center, this role being assigned to the territorial prosecutors' offices.

According to the new paradigm the PA was to focus primarily on investigating cases of grand corruption which was difficult to achieve, given that the leadership of the criminal prosecution of cases under the jurisdiction of the NAC was maintained at the PA, and the NAC's jurisdiction was not significantly reduced. This meant that half of the criminal cases sent to court by the PA were actually criminal cases regarding petty corruption handled by the NAC [14, p.12].

Even though, apparently, removing the NAC from the PA's subordination was a justified change that would allow the PA to focus on grand corruption and not disperse its efforts on combating petty and systemic corruption, investigated by the NAC, in practice a series of difficulties arose.

On the one hand, the territorial prosecutor's offices were neither professionally prepared nor had the number of specialists to assume the leadership of the criminal prosecution in criminal cases investigated by the NAC.

On the other hand, with the removal of the NAC from the PA subordination, this institution was deprived of operational and logistical support, which made it difficult to fully, objectively and in a timely manner investigate the criminal cases assigned to the material competence of that institution. Therefore, with the withdrawal of the NAC from the PA subordination, the number of criminal prosecution support personnel consisting of criminal prosecution officers and seconded investigation officers was to be supplemented to procedurally support the activity of prosecutors called to exercise functional attributions in the name and in the interest of the PA.

At the same time, it was necessary to identify and assign a new headquarters, with the necessary technical and material equipment which would correspond to the profile of this institution and make it possible to carry out activities at the highest level. This desire was constantly reiterated by the people responsible for the administration of the PA [15].

Contrary to the development strategies of the Prosecutor's Office system, on 20.01.2025, the President of the Republic of Moldova convened a meeting of the Supreme Security Council (SSC) and, under the pretext of strengthening the fight against *political corruption* and *increasing national security*, proposed to consolidate the institutional architecture of the bodies responsible for combating corruption and the legal framework, for harsher sanctions of actors involved in political and electoral corruption [16].

Based on the recommendations of the SSC, on 29.01.2025, the Minister of Justice, during a press briefing, stated that "Republic of Moldova is facing increasingly complex forms of crime that affect national security, in particular corruption, including political and electoral corruption, with the involvement of organized criminal groups aimed at destabilizing the rule of law, treason, hybrid warfare", which is why he announced the merger of the two specialized prosecutor's offices – PA and PCCOCS, into a single structure [17].

In light of the above reported events, on 12.02.2025, the draft Law on the Prosecutor's Office for Anti-Corruption and Combating Organized Crime (PACCO) was registered in the Parliament of the Republic of Moldova [1].

It is not clear how quickly this project was developed and promoted, given that, as we will demonstrate below, the unification of the two specialized prosecutor's offices was not anticipated by the Prosecutor's Office Reform Strategy and does not correspond to the logical course of development of this institution.

As indicated above, the initiative to unify the two specialized structures was discussed and decided at the SSC meeting, but it did not represent a planned stage in the reform of the Prosecutor's Office system.

We draw attention to the fact that "The Supreme Security Council is an advisory body that analyzes the activity of ministries and other central administrative authorities in the *field of ensuring national security and defense* and *presents recommendations* to the President of the Republic of Moldova on issues of internal and foreign policy of the state" [18].

"State security means the protection of the sovereignty, independence and territorial integrity of the country, its constitutional regime, its economic, technical-scientific and defensive potential, the legitimate rights and freedoms of the individual against the informational and subversive activity of special services and foreign organizations, against criminal attacks by particular groups or individuals" [19].

It is not clear to what extent the existence and functioning of two specialized prosecutor's offices with distinct material competences threatens the sovereignty, independence, territorial integrity, constitutional regime, economic, technical-scientific and defensive potential of the Republic of Moldova.

Another argument in favor of unifying the two structures was the need to strengthen the fight against *electoral corruption*.

In our opinion, this argument does not hold either, or the investigation of electoral corruption crimes is the exclusive material competence of the NAC, not of the PA or the PCCOCS. The NAC was not targeted by this legislative initiative which raises some assumptions regarding the objective circumstances that were the basis for the development of this project.

This initiative seems all the more inopportune as it was not foreseen by the Prosecutor's Office's development strategy for 2021-2025 which continues to promote the need to consolidate the two specialized prosecutor's offices, including by granting separate budgets and specialized personnel [8, p.30].

Moreover, the General Prosecutor's Office itself expressed its negative views on the initiative to reorganize the two Prosecutor's Offices, considering that this could have a significant impact on the terms of criminal prosecution and ongoing procedures [20].

Taken into account the initiative to unify and reform the two prosecutor's offices

came from powers other than the judiciary, we believe that this fact categorically affects the *principle of separation of powers in the state*.

At least at this stage, the reasoning behind the unification of specialized prosecutors' offices is not clear, given that the unification process itself involves a multitude of organizational issues involving the approval of a new organizational chart, the secondment of prosecutors to the territory and the delegation of new prosecutors, a situation that will immediately lead to the delay of criminal prosecution of ongoing criminal cases, etc.

Considering the arguments presented in the explanatory memorandum to the Law on the Prosecutor's Office for Anti-Corruption and Combating Organized Crime [1], it seems that these amendments were conditioned by the need to strengthen the fight against *electoral corruption committed by criminal organizations, including cross-border ones*.

We do not agree with the authors who insist on the fact that there is an indissoluble link between corruption and organized crime, which is why they consider it necessary for them to be investigated by a single authority. Basing their position on the simple fact that most of the components of the crime that incriminate acts of corruption contain as an aggravating factor the commission of the crime in the interest of an organized criminal group or a criminal organization.

This argument is of little relevance, or rather, not all corruption crimes, even electoral corruption will necessarily be committed by organized criminal groups or criminal organizations.

On the other hand, organized crime is not limited to acts of corruption, but has a much broader spectrum, which is why, originally, it was considered necessary to establish an entity specialized in this field such as PCCOCS.

In another vein, there are numerous inaccuracies related to the provisions of the draft law under discussion and the establishment and further activity of this unique institution generically called ,,PACCO", as follows.

According to Art.3 para.(2) of the Draft Law discussed [1], PACCO is specialized, inter alia, in the field of combating *corruption crimes and acts related to corruption*. Formulations that create some confusion in the interpretation of the law as neither the criminal nor the procedural law operates with such formulations.

According to Art.44 parag.(1) of Law No.82/2017 [21], *acts of corruption* are to be understood as – *crimes and contraventions, committed in the public and private sectors, the sanctioning of which is provided for by the Criminal Code and the Contravention Code*.

After which, in paragraph (2) of the same norm, the following acts are listed as acts of corruption: *a) active corruption; b) bribery; c) corruption of voters; d) passive corruption; e) taking bribes; f) receiving illicit remuneration for performing work related to serving the population; g) influence peddling; h) manipulating an event; i) fixed bets; j) illegal financing of political parties or electoral campaigns, violation of the management of the financial means of political parties or electoral funds; k) embezzlement of public assets; l) embezzlement of funds from foreign funds; m) use of funds from domestic loans or foreign funds contrary to their intended purpose*.

Subsequent, according to Art.45 of Law No.82/2017 [21], *are acts related to acts of corruption – crimes committed in the public and private sectors, which were committed together or in direct connection with an act of corruption, as follows: exercising official duties in the public sector in a situation of conflict of interest; exercising official duties in the pri-*

vate sector in a situation of conflict of interest; *abuse of power or abuse of office in the public sector*; *abuse of office in the private sector*; *excess of power or exceeding official duties*; *negligence in office*; *falsification of voting results*; *fraudulently obtaining means from external funds*; *forgery of public acts*; *forgery of accounting documents*; *concealment of assets and personal interests by declarants in the public sector*; *concealment of assets and personal interests by declarants in the private sector*; *illicit enrichment*; *violation of the confidentiality regime of information from declarations of assets and personal interests*; *violation of lending rules, loan granting policies or rules for granting insurance compensation/indemnity*; *defective or fraudulent management of the bank*; *obstruction of banking supervision.*

As can be seen from the analysis of the above-mentioned norm, acts of corruption and related acts not only exceed the number of crimes attributed to the material competence of PACCO, but also exceed the number of corruption and related acts incriminated by the current criminal law.

According to Art.11 para.(5) of the analyzed draft Law [1], upon the termination of the PA and PCCOCS activities, prosecutors, including chief prosecutors, will be proposed for transfer to other territorial prosecutor's offices, according to the existing vacancies. We consider this provision to be at least unfounded given that according to Art.11 para.(3) of the same law, PACCO is the legal successor of PA and PCCOCS. The situation seems even more unusual given that the rest of the staff, including consultants, specialists, technical and administrative staff, and staff seconded from other institutions will continue to work within PACCO.

So, prosecutors, including chief prosecutors, will have to accept the transfer to any territorial subdivision of the Prosecutor's Office, according to existing vacancies, and will receive the position-specific salary rights held within the PA and PCCOCS framework, until the positions are filled in the newly created entity.

We consider this provision to be at least unfounded, or at the moment, in the territorial subdivisions of the Prosecutor's Office there are not available the number of vacant positions that would correspond to the total number of prosecutors working in the PA and PCCOCS. Therefore, in order to be able to carry out this exercise, it is initially necessary to fill the positions in the territorial prosecutor's offices according to the number of prosecutors within the specialized prosecutor's offices that are to be transferred.

This exercise clearly disadvantages the prosecutors subject to transfer, as the vast majority of the places proposed to be filled refer to territorial prosecutors' offices, which do not correspond to the radius in which the respective persons reside, which imposes additional travel and living expenses for the respective persons and thus may put them in the position of giving up the prosecutorial profession.

In our opinion, the transfer of prosecutors from specialized prosecutor's offices to territorial prosecutor's offices is in fact nothing more than a demotion in position, which represents a disciplinary sanction.

In this regard, the provisions of Art.39 paragraph (5) of the Law on the Prosecutor's Office [3] are relevant, according to which "relegation from office implies the transfer from the position of chief prosecutor to a prosecutor's position or the transfer of the prosecutor from the General Prosecutor's Office or from a specialized prosecutor's office to a territorial prosecutor's office. Relegation from office is made on the basis of the sanctioning decision, by order of the General Prosecutor".

On the one hand, prosecutors are obliged to accept the transfer under the condi-

tions in which the two specialized prosecutor's offices are reorganized through merger, and on the other hand, the transfer is to be carried out on equivalent positions that are even fewer than the vacant positions in the territory.

It should be noted that, interpreting the norm of Art.11 para.(3) and para.(6) of the criticized law as a whole, it can be deduced that the notification of the prosecutors who are to be transferred will be made within the term of 30 days from the date of entry into force of the respective law, which is in cardinal contradiction with the provisions of Art.88 para.(1) letter b) of the Labor Code [22], which stipulates that upon liquidation of the unit, the employer shall issue an order (provision, decision, ruling) regarding the prior notification, under signature or by another means that allows confirmation of the receipt/notification of each employee concerned, of the employees 2 months before the liquidation of the unit. Probably aware of this truth, the authors of the legislative initiative tried to circumvent the situation created by preserving the previous salary rights for all prosecutors subject to transfer, until the appointment of the last prosecutor in the newly created structure [1].

At the same time, this provision is discriminatory in relation to prosecutors within the territorial prosecutor's offices who will receive salary rights specific to the position held under the conditions in which they will perform the same workload as prosecutors transferred from the two specialized institutions.

Another relevant aspect is the performance evaluation of the chief prosecutor of PACCO, which is carried out by an ad-hoc committee established by the Superior Council of Prosecutors [1].

Based on the wording of the norm in Art.6 of the draft Law under discussion [1], it can be deduced that this procedure limits the independence of the chief prosecutor and places him at the discretion of the General Prosecutor and the Superior Council of Prosecutors, who, every two years, can initiate his verification and, consequently, his dismissal for lack of performance.

In our opinion, the chief prosecutor of PACCO, after being evaluated and taking office, must receive the guarantee that he will organize and direct the activity of that institution without influences from outside the system.

Moreover, the composition of the evaluation committee which is made up of 5 members, at least two of whom have at least 7 years of experience as a prosecutor raises doubts. The members will be proposed: one by the General Prosecutor; one by the Minister of Justice; one by the Superior Council of Prosecutors; one by the Superior Council of Magistrates and one by the chief prosecutor of PACCO who is actually subject to evaluation [1].

First of all, the minimum of two members with at least 7 years of experience as a prosecutor is too few to objectively evaluate the activity of the chief prosecutor of a specialized prosecutor's office. In our opinion, the designated prosecutors should have extensive professional experience in all subdivisions of the Prosecutor's Office, including specialized prosecutor's offices, but also in the positions of chief prosecutor, in order to objectively evaluate and appreciate the activity of the chief prosecutor of PACCO.

Secondly, we consider it absolutely inadmissible that the structure of this commission includes members appointed by the Minister of Justice and the Superior Council of Magistracy, because it violates the principle of independence, or "the Prosecutor's Office is independent of the legislative, executive and judicial powers of any political party or

socio-political organization, as well as of any other institutions, organizations or persons. Interference in the activity of the Prosecutor's Office is prohibited" [3].

Given that the new structure will not be able to be put into operation immediately, the opportunity has been foreseen for the appointment of an interim chief prosecutor of PACCO by the General Prosecutor, until the competition for the replacement of the chief prosecutor is organized. Already, the chief prosecutor will be able to constitute his "transition team" by proposing candidates for ordinary prosecutors who will be delegated by order of the General Prosecutor with the agreement of the Superior Council of Prosecutors for a period of up to one year [1].

Subsequently, the Superior Council of Prosecutors will initiate the competition for the position of chief prosecutor and prosecutors within PACCO and will immediately appoint them to office with the external evaluation [23] of the prosecutors in office to be carried out along the way.

In our opinion, this procedure of co-opting prosecutors within the new structure seriously affects the independence of the prosecutors who will take office. Or, the delegation of prosecutors is made at the discretion of the General Prosecutor, based on the proposal of the interim chief prosecutor who was also appointed to office by the latter, for a limited term. Even after the eventual appointment of PACCO prosecutors, they will not be sure of the position they will occupy, as their external evaluation stage follows, which also "may disqualify them".

The lack of predictability of the prosecutor's mandate within this specialized structure may make them vulnerable to requests from hierarchically superior prosecutors on whom their further delegation depends.

In this regard, the assessments of the Venice Commission [24] are relevant, which, among other things, notes that "...the changes introduced as a result of the reorganization of the judicial system should be carried out in such a way as not to pose a problem in terms of the administration of justice and the treatment of the prosecutors initially appointed. These changes must guarantee that the principle of the independence of each prosecutor is not affected. Prosecutors should always be treated with the respect due to their position within the prosecution service as such".

Another issue that raises the confusion of practitioners and which may cause certain difficulties in the practical application of this normative act concerns the procedure for the secondment of criminal prosecution officers, investigation officers and information and security officers.

According to Art.8 of the criticized draft Law [3], the delegation of criminal prosecution officers, investigation officers and information and security officers is made by order of the General Prosecutor, based on the prior approval of the head of the respective institution and the consent of the subject concerned. Which in our opinion contradicts legal logic, or the functional powers of the General Prosecutor do not extend to collaborators of other institutions.

We believe that the secondment of criminal prosecution officers, investigation officers, and information and security officers should be carried out by order of the head of the institution to which they belong, at the request of the General Prosecutor and with the consent of the subject concerned.

Finally, we consider the political decision to unify the two specialized prosecutor's offices unfounded, given that they investigate distinct criminal phenomena that require

different approaches, specific professional training and particular approaches, which can only be carried out by structures specially established to investigate these phenomena.

This initiative does not correspond to the spirit of reforming the Prosecutor's Office system. It was not even anticipated by the Prosecutor's Office development strategy [8, p.20] for the reference period. This speaks not only of the inopportuneness of this reform, but also of the fact that this change was not previously sought and prepared for its implementation.

The Venice Commission's assessments expressed in its opinion on the draft law on the abolition of the section for investigating crimes in the judiciary will be taken into account, which stated that "While recognizing that the organization and structure of a criminal prosecution service is a matter for the authorities to decide, the Venice Commission has consistently supported institutional specialization in the fight against corruption" [25]. This indicates that the institution called upon to fight corruption must be a specialized and distinct institution.

We draw attention to the fact that, even "in Romania there are two specialized prosecutor's offices (the equivalent of the Moldovan Prosecutor's Office) – the National Anticorruption Directorate (DNA) and the Directorate for the Investigation of Organized Crime and Terrorism Offenses (DIICOT). Both exercise exclusive jurisdiction over the entire territory of the country and organize their own territorial structures" [14, p.4].

Therefore, we consider it appropriate to continue to operate two distinct entities on the territory of the Republic of Moldova, one specialized in combating grand corruption and the other in combating organized crime. It does not matter whether these two structures will be established as specialized prosecutor's offices or will be organized in the form of sections and directorates of the General Prosecutor's Office.

Another aspect with which we disagree is related to the fact that by virtue of the criticized law, the suspension of the terms of criminal prosecution [3] was ordered, including the limitation periods regarding the holding of the person to criminal liability for the formulation of complaints and the exercise of appeals. Or, according to the provisions of Art.7 para.(1) of the CPC, "the criminal trial shall be conducted in strict accordance with the unanimously recognized principles and norms of international law, with the international treaties to which the Republic of Moldova is a party, with the provisions of the Constitution of the Republic of Moldova and of this Code". Therefore, other normative acts cannot intervene to complete, supplement or suspend the provisions of the criminal procedural law.

The Constitutional Court itself ruled that "in order to unify the legal procedural framework and exclude confusing and contradictory provisions, in order to respect the fundamental rights and freedoms of all persons involved in the criminal process, the legislator stipulated that the legal norms of a procedural nature from other national laws may be applied only on condition that they are included in the Criminal Procedure Code. Such a legislative technique is likely to ensure the elimination of inconsistencies between the provisions of the Criminal Procedure Code and the criminal procedural norms contained in other laws, the coherent, certain and uniform application of the respective norms, so that full respect for the fundamental rights and freedoms of man can be guaranteed" [26].

The Court emphasizes that "the Criminal Procedure Code determines the procedural order, the limits and the modalities of the activity of the judicial bodies on the territory of the republic. Being an organic law from the point of view of the general constitutional

provisions established by Art.72, the Criminal Procedure Code does not have priority over other organic laws, but as a special law, according to the general rules of law, regardless of the date of adoption, it acquires superiority over other organic laws according to the principle of *lex specialis derogat generali*. Therefore, the legislator, in order to achieve the constitutional principles of the rule of law, to ensure the legality and protection of the fundamental rights and freedoms of the person in the sphere of criminal justice, codifying the norms that regulate the manner of conducting criminal prosecution and adjudicating the criminal case in court, was entitled to legislate the priority of the Criminal Procedure Code over other laws that regulate relations of the same nature" [26].

It is true that the respective draft law does not affect the deadlines for preventive measures applied to criminal cases within the two specialized prosecutor's offices, but these deadlines may be affected by the extension of the procedure for transferring criminal cases from the PA and PCCOCS to the PACCO and the delegation of prosecutors within the new structure.

At the same time, it is not clear, under what conditions and what will be the procedure for withdrawing criminal cases from the PA and PCCOCS and transmitting them to the General Prosecutor's Office, so that they can subsequently be returned to the newly established entity. Will handover-reception documents be drawn up, will the criminal cases be submitted by simple correspondence, or will orders for withdrawal and transmission of criminal cases be drawn up, in accordance with the provisions of Art.271 para. (7) of the CPC [28]?

In another context, in this "journey of files" there is a risk of information leakage, the confidentiality of the criminal prosecution may be affected, given that other people may also have access to the criminal case materials.

Another aspect that raises some suspicions is related to the ,,rush" with which this draft law was drafted and proposed without a detailed analysis of the situation in the field, without public consultations, without the opinions of the institutions concerned and, most importantly, without the opinion of the Venice Commission.

Conclusions and recommendations. Generalizing the information discussed above, we can conclude on the following relevant aspects. The reform of justice in general and the prosecution in particular is a necessary and continuous process, but it must correspond to development strategies in the field, be carefully developed by working groups that know the specifics of the field and only after studies and analyses of the situation in the field, including in relation to other states that have registered successes (an example to follow in this regard is Romania).

The fight against *political corruption* is not a sufficient reason to merge two specialized prosecutors' offices into a single unit. Given that these two structures are not even the main subjects in the fight against political corruption. The competence to investigate political corruption crimes belongs primarily to the National Anticorruption Center.

In another vein, reforming an institution that is intended to be the main subject in the fight against electoral corruption on the eve of parliamentary elections is, at the very least, a risky change that can make this process even more difficult given the organizational problems that can spread over time.

The unification of the two prosecutors' offices will cause a series of organizational problems, many of which could not even be anticipated at this stage, which will seriously and irreparably affect the criminal prosecution in criminal cases pending in the two insti-

tutions and which will result not only in the unfounded delay of the criminal prosecution, but also in the violation of procedural deadlines, which in the future may condition the impossibility of holding the responsible persons criminally liable.

Given the specific nature of the criminal cases being processed, the confidentiality of the criminal prosecution may be affected in the process of transmitting criminal cases from old structures to new ones.

The start of the procedure for unifying the specialized prosecutors' offices will not only jeopardize their activity, but also constitute an exercise that affects the independence of prosecutors, as on the one hand the staff of the two specialized prosecutors' offices will be relegated to the territorial offices, and other prosecutors will be delegated to PACCO for a limited period of 6 to 12 months, who will not necessarily participate or. If they do participate, will not necessarily pass the competition to fill the positions within the newly created structure, and even if they do take up the position, there is a risk that they will not be promoted later in external evaluations. This may affect the motivation of prosecutors to get involved and to undertake the investigation of large-scale cases involving a large volume of work and a longer term of criminal prosecution.

Also, the transfer of all PA and PCCOCS prosecutors to the territory is impossible given that at the moment, within the specialized prosecutor's offices, there are not a sufficient number of vacant positions.

The implementation of such a reform can only be achieved within the framework of a development strategy of the respective institution and only with the coordinated approval of all relevant institutions, but especially with the positive approval of European development partners.

What matters is the common interest, not the departmental or personal, group comfort. Society needs a truly functional Prosecutor's Office that will not be influenced by any political force or power, be it the executive or the legislative. Only then the citizens will have confidence in it. The population needs a Prosecutor's Office that responds to its pressing needs, not one that serves group or party interests. A Prosecutor's Office that functions democratically, that makes sure that the rule of law works for everyone, but not selectively [27. p.15].

Perspectives. Given the different material competence of the two specialized prosecutor's offices, we consider it appropriate to strengthen and consolidate them as separate structures (specialized prosecutor's offices or departments, sections within the General Prosecutor's Office), with a clear delimitation of competence.

In order to strengthen the two institutions, it is necessary to amend the normative acts regarding specialized prosecutors' offices in the sense that they are granted a higher degree of autonomy in the hierarchy of the Prosecutor's Office system, with the approval of separate budgets, technical and material endowments according to the needs and activity profile.

With reference to the PA, given that the NAC was removed from its subordination, it is necessary to increase the number of criminal investigation officers and seconded investigation officers to assist prosecutors in carrying out criminal investigations.

Indeed, the PA is going to channel its efforts into the fight against grand corruption, including electoral corruption, only when it is committed by various criminal groups or organizations.

Given that the NAC was removed from the PA's subordination, in order to, on the

one hand, the circumstances established in this study, and, on the other hand, the special role that specialized prosecutors' offices have in combating the criminal phenomenon, as a series of crimes with a high degree of complexity and difficulty have been attributed to their competence, the proper investigation of which requires the cooperative effort of several procedural actors: prosecutors, criminal investigation officers and investigation officers. We consider it necessary for the present study to be continued, especially from the perspective of evaluating the possibilities of organizing specialized prosecutors' offices within autonomous structures with diverse personnel that would include not only prosecutors with a certain level of training, but also their own criminal investigation officers and investigation officers who in the future would not have to be delegated from other structures.

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THE USE OF INVESTIGATIVE INFORMATION DURING THE JUDICIAL EXAMINATION STAGE OF THE CRIMINAL CASES

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Summary

The primary purpose of criminal proceedings is to establish the truth concerning the commission of a criminal offence, in order to hold the person responsible criminally liable. The establishment of the truth occurs either during the pre-trial (investigative) phase, conducted by the prosecutor, or during the trial phase, specifically within the evidentiary proceedings carried out by the court, where the evidence is examined and assessed.

In the investigation of criminal cases-particularly those related to drug trafficking, economic crimes, corruption, and other latent offences-detection, the investigations are conducted primarily by criminal investigation officers through the use of special investigative measures.

In this context, during the judicial examination of such offences, the court, when issuing its judgment, does not rely solely on witness testimonies and/or victim statements as evidence, but places significant weight-pursuant to Article 93(2)(8) of the Criminal Procedure Code on the results of special investigative measures. These results are formally recorded in an official report drafted by the designated investigating officer.

Special investigative measures must be conducted in accordance with the provisions of the Criminal Procedure Code and Law No.59 of 29 March 2012 on special investigative activities.

During the conduct of such activities, the violation of fundamental human rights and freedoms is strictly prohibited. Any information or evidence obtained in breach of these rights shall be declared null and void, deemed non-existent, and may not serve as the basis for a conviction or for the termination of criminal proceedings on non-rehabilitative grounds.

Keywords: special activity, special measures of investigations, investigative officer, evidence, criminal trial, judicial examination, court, sentence.

Introduction. The primary objective of criminal proceedings is to establish the truth regarding the commission of an offence, an aim which necessitates the implementation of various measures intended to identify the perpetrator, demonstrate their guilt, and ensure their criminal liability.

The investigation of criminal cases classified as serious, particularly serious, or exceptionally serious is, where appropriate, conducted with the involvement of investigating officers who carry out special investigative measures. The results of these techniques are recorded in an official report on the findings of the special investigative measure which pursuant to Article 93(2)(8) of the Criminal Procedure Code constitutes evidence. When corroborated with other evidence administered during the criminal proceedings, such results serve as the basis for establishing the truth, as ultimately determined by the judgment rendered by the court.

The investigative actions must be carried out with particular caution so as not to exceed legal limits, especially considering that the right to private life, respect for hu-

man dignity, and the inadmissibility of interference in personal life have reached the high standards enshrined in international instruments ratified by the Republic of Moldova [3].

Methods and materials applied. This article employs traditional legal research methods, including the logical, grammatical, historical, and observational methods, as well as the systemic and comparative approaches. The foundation of this study is grounded in doctrinal concepts concerning the nature of investigative measures and the evidentiary value of the results obtained through special investigative measures. The analysis draws primarily on legal scholarship in this field, with particular reference to the works of Boris Glavan and Ion Covalciuc.

Discussion and results obtained. The primary objective of criminal proceedings is to establish the truth regarding the commission of a criminal offence, in order to ensure that the person responsible is held criminally liable.

Criminal proceedings are initiated to determine both the existence of the offence and the identity of the person responsible, with the aim of achieving criminal liability through the fair and proper application of criminal law. This is considered the immediate goal of any criminal proceeding [1].

Thus, criminal proceedings represent an organized activity that must be regulated in accordance with its established objectives and guided by certain general rules and fundamental principles, so that the entire procedural framework is directed toward achieving the goals of justice in line with the overarching directives of criminal policy [11].

The establishment of the rule of law and the transition toward new democratic forms of conducting criminal proceedings are taking place under extremely difficult conditions, which are particularly reflected in the rising crime rates and the increasingly adverse qualitative characteristics of criminality.

This situation clearly hinders the fulfillment of the long-standing and ever-relevant objective of effectively combating crime, or at the very least, maintaining it at a level that does not undermine the normal functioning of essential social structures [6].

The establishment of the truth may occur during the criminal investigation phase, upon the issuance of an order to discharge the person from criminal investigation (Article 284 CPC), the termination of the criminal investigation (Article 285 CPC), or the dismissal of the criminal case (Article 286 CPC).

During the trial of a criminal case, the judicial phase which constitutes the central and most significant stage of criminal proceedings, the court examines the case in a public hearing with the participation of the parties and as a result delivers a judgment. This judgment is the judicial act through which the court determines whether or not the accused is guilty of the offence as outlined in the indictment submitted to the court. However, pursuant to Articles 325 and 326 of the Criminal Procedure Code, the indictment may be modified during the judicial examination, either to aggravate or mitigate the charges, if the findings made during the trial justify such a modification. Although the trial is based on the indictment, it is not strictly limited by its content.

According to Article 53(1) and Article 366(4) of the Criminal Procedure Code, after reading out the charges, the prosecutor presents the evidence for the prosecution to be examined during the court hearing. In criminal proceedings, evidence includes factual elements that are admissible and administered in accordance with Article 93 CPC [4].

According to the provisions of Article 93 CPC, evidence consists of factual elements obtained in the manner prescribed by this Code, which serve to establish the existence

or non-existence of a criminal offence, to identify the person responsible, to determine their guilt, and to ascertain other circumstances relevant to the fair resolution of the case.

A similar definition of the concept of evidence is provided in Article 6(33) of the Criminal Procedure Code, which states that evidence consists of factual elements obtained in the manner prescribed by this Code, serving to establish circumstances that are relevant to the fair resolution of the criminal case [7].

Thus, during the criminal investigation phase, the prosecutor, or during the trial – the court, with the participation of the parties, verifies and examines all evidence in procedural forms strictly prescribed by law. This includes both the evidence collected and submitted by the criminal investigation body (the prosecution), as well as any additional evidentiary material presented directly by the parties during the court hearing. In this way, the adversarial nature of criminal proceedings is ensured [12].

Based on the evidence and arguments submitted by the parties during an adversarial process, the court must examine the case on the merits, applying the standard of the absence of reasonable doubt.

The judicial examination is carried out through the verification and assessment of the evidence presented by the prosecution, as well as that submitted by the defense. The judicial examination constitutes the most important and fundamental part of the trial. During this stage, with the participation of the parties and in full observance of all democratic principles of due process, the court examines all the circumstances of the case, verifies all the evidence collected, both that submitted by the prosecution and that introduced additionally at the request of the parties, in order to establish the truth in the criminal case, deliver a lawful and well-founded judgment, and fulfill its educational and punitive functions.

Judicial examination involves verifying the evidence collected by the criminal investigation body, and where necessary, administering new evidence in order to clarify the case in all its substantive aspects.

The judicial examination has as its object the re-administration and verification of all evidence gathered by the criminal investigation authorities. In doing so, the principle of immediacy is observed, as the evidence is perceived directly and firsthand by the court. It also includes the administration of any additional evidence. Only in this manner the court can establish the truth and form its conviction regarding the judgment it will render in the case. All evidentiary material produced during the criminal investigation phase is reintroduced under conditions of publicity, orality, immediacy, and adversariality.

During the judicial examination, the entire body of evidence is reviewed and assessed, and this evidentiary material serves as the foundation for the court's final judgment [10].

In the investigation of serious criminal cases – particularly those concerning drug trafficking, economic crimes, corruption, and other offences falling within the category of latent criminality – detection and investigation are carried out exclusively by investigation officers through the use of special investigative measures.

The use of special investigative measures and the involvement of investigation officers in detecting such offences has significantly increased, especially since the beginning of the current millennium when criminal activity began to fully exploit the opportunities provided by modern technologies introduced during the Fourth Industrial Revolution, marked by the emergence and widespread use of the internet, social networks, and mo-

bile communications.

In the context of increasingly sophisticated and organized criminal methods, there arose a need for new means of proving criminal acts. Traditional evidentiary procedures soon proved less effective in documenting the emerging forms of crime, such as acts of corruption, terrorism, economic fraud, and the illegal trafficking of persons, weapons, drugs, pharmaceuticals, radioactive substances, and others. The aspiration to align with the standards and requirements of the European Union Member States led several countries from the post-Soviet space to adopt the experience and European model for addressing this issue [9].

Under these circumstances, one of the fundamental forms of knowledge acquisition in the public domain is the special investigative measures which are used to obtain information from areas that are otherwise inaccessible to the general public. These measures often entail interference with fundamental human rights, as guaranteed both by the Constitution of the Republic of Moldova and by international legal norms set forth in the treaties to which the Republic of Moldova is part [6].

The inclusion of special investigative measures in the provisions of the Criminal Procedure Code in 2012 represented a novelty and marked an attempt to obtain evidentiary material during the course of the criminal investigation through the implementation of such measures, particularly in situations where the purpose of the criminal proceedings could not be achieved by other means and/or where the process of evidence collection could have been significantly impaired.

Thus, in 2012, Chapter III – Means of evidence and evidentiary procedures of the Criminal Procedure Code, Section 5, was supplemented with a new subsection entitled Special Investigative Measures, which includes three-quarters of the total twenty special investigative measures (SIMs) provided for under Law No.59/2012 on special investigative activity [9].

Since 2012, following the amendments and additions subsequently made to the Criminal Procedure Code, it has been unequivocally established in the provisions of the Code that special investigative measures are to be carried out by investigation officers during the criminal investigation, under the conditions and in the manner prescribed by the Code.

According to Article 57/2 CPC, the investigation officer is the authorized person who, on behalf of the law and within the limits of their competence, carries out special investigative measures within the framework of criminal proceedings [1].

Thus, special investigative measures are carried out by investigation officers from specialized subdivisions within, or subordinated to, the Ministry of Internal Affairs, the Ministry of Defence, the National Anticorruption Center, the Security and Intelligence Service, the State Protection and Guard Service, the Customs Service, the State Tax Service, and the National Administration of Penitentiaries. The conduct of special investigative measures by authorities other than those listed is strictly prohibited [2].

We firmly believe that, without the application of special investigative measures, it is not possible to suppress offences at the preparatory or attempted stages, nor to prevent or detect crimes that threaten social relations whose existence and normal functioning depend on the safeguarding of state sovereignty, territorial integrity, and both external and internal security.

The essence of special investigative measures lies in the determination of the truth.

In other words, through special investigative activity – distinct from procedural criminal law instruments but conducted through legally authorized actions – without violating human rights, and by means that may be covert, encrypted, or public, it becomes possible to identify those responsible for committing the unlawful act, to reconstruct the sequence of criminal events, and to clarify the possible avenues for obtaining evidence related to the offence.

When analyzing issues related to special investigative activity, it is most often the special investigative measures themselves that are the subject of examination, namely, the tools used by investigation officers to fulfill the objectives of special investigative activity [5].

At present, the prosecutor is, in practice, the only actor legally empowered to participate not only in all stages of criminal proceedings, but also in the conduct of special investigative activity. This leads to the conclusion that the prosecutor bears a particular responsibility for ensuring that special investigative measures are carried out in strict compliance with the rule of law. Currently, the prosecutor is practically the only legally authorized subject – apart from the court – who may intervene in the process of special investigative activity, including having the competence to assess the results of such activity.

At the same time, in accordance with Article 39 of Law No.59 of 29 March 2012 on special investigative activity, oversight of the enforcement of the legal provisions is carried out by the prosecutor, either on the basis of complaints submitted by individuals whose rights and legitimate interests are alleged to have been violated, or ex officio, in cases where the special investigative activity was authorized by the prosecutor or where authorization was requested by the investigating judge [6].

At the pre-trial stage, the court, through the investigating judge, verifies the legality of the special investigative measures. Subsequently, at the trial stage, it examines the procedural documents recording the results of those measures, in conjunction with other evidence as provided under Article 93 of the Criminal Procedure Code, with a view to determining whether such evidence may serve as a basis for the judgment.

In this context, it is important to emphasize that the essence of the judicial examination in such cases does not lie in the hearing of witnesses and/or the injured party, but rather in the examination of the results of special investigative measures. Article 93(2)(8) CPC stipulates that, in criminal proceedings factual elements established through the following means shall be admissible as evidence: procedural documents recording the results of special investigative measures and their annexes, including transcripts, photographs, recordings, and other such materials.

According to the provisions of Article 22 of Law No.59 of 29 March 2012 on special investigative activity and Article 136 of the Criminal Procedure Code of the Republic of Moldova, the means of evidence through which the results of special investigative measures are made available to the judicial authority is the official report documenting the execution of the special investigative measure [2].

The official report documenting the special investigative measure must first and foremost comply with the formal requirements, and it must include, as indicated by the investigation officer, the following:

1) The place and date of the drafting of the official report;

2) The place, date, and time of commencement and completion of the special inves-

tigative measure;

3) The position, full name of the investigation officer designated to carry out the special investigative measure and who drafted the report, except for the data of persons whose identity and status constitute state secrets;

4) The full names and status of the persons who participated in the execution of the measure, and, if necessary, their addresses, objections, and explanations, except for the data of persons whose identity and status constitute state secrets;

5) The number of the criminal case within which the special investigative measure was carried out;

6) A reference to the procedural orders issued by the criminal investigation officer or, where applicable, by the prosecutor, and to the authorizations granted by the prosecutor or, where applicable, by the investigating judge;

7) Identification data and other relevant information concerning the person in respect of whom the special investigative measure was carried out, if known;

8) A detailed description of the facts established, as well as the actions undertaken during the execution of the special investigative measure;

9) A mention of the use of technical means during the execution of the special investigative measure, the objects to which such means were applied, the results obtained, and the identification details of the data storage device where the information was recorded; and any other relevant information obtained as a result of carrying out the special investigative measure.

The official report shall be accompanied in a sealed envelope, by the data storage medium containing the results of the special investigative measures [1].

The results of special investigative measures may acquire the status of evidence only after they have been verified by the prosecutor or, as the case may be, by the investigating judge, in terms of legality, compliance with human rights and fundamental freedoms, and adherence to the conditions and grounds on which the special investigative measure was carried out. A corresponding ordinance or judicial ruling shall be issued to this effect [9].

During the judicial examination, the state prosecutor is required to play an active role in supporting the prosecution and presenting the prosecution's evidence. According to Article 373 CPC, the law provides a specific procedure for the examination of official reports documenting special investigative measures, stating that these documents may be read in full or in part. However, in many cases, the state prosecutor merely reads the title of the procedural act, the date it was drafted, the name of the person who prepared it, and where applicable, brief elements related to the accused's guilt without engaging in a full analysis of the document. This practice benefits the defense, as in most cases the defense challenges not only the formal aspects of the report, but also its substantive content.

In numerous cases, it has been found that the information contained in the transcripts contradicts the data stored on the optical media, or that the optical media contains files saved in different electronic formats, particularly those files containing the most important information. In some situations, phonographic expert examinations could not establish the identity of the persons whose voices appeared in the recordings, or explain why the voices differed from those in other files. Moreover, the information reflected in the procedural documents sometimes exceeded the time limits set by the investigating judge's ruling that authorized the execution of the special investigative measure. As a

result, the official report documenting the special investigative measure was drawn up in breach of procedural requirements, which benefits the accused. In such cases, the provisions of Article 94(1)(1-12) of the Criminal Procedure Code must be applied, provisions that stipulate which types of information are inadmissible as evidence [8].

Subsequently, the state prosecutor must also take into account that, in criminal cases where the evidentiary basis relies primarily on the results of special investigative measures, consideration must be given to the provisions of Article 93(4) CPC. This article stipulates that factual data obtained through special investigative activity may be admitted as evidence only if such data were administered during the criminal investigation and verified by means provided under paragraph (2), in accordance with the procedural law, with due respect for the rights and freedoms of the person, or where the restriction of such rights and freedoms was authorized by the court.

In such situations, during the criminal investigation phase, evidence must be administered through the conduct of criminal investigative actions by the criminal investigation body, including direct evidence that corroborates the results of the special investigative measures.

Moreover, it must be taken into account that the execution of special investigative measures must be carried out without infringing the rights of the defendant. According to Article 385(4) of the Criminal Procedure Code, if during the criminal investigation or the trial, violations are found that have seriously affected the rights of the defendant arising from their procedural status, the court shall examine the possibility of reducing the defendant's sentence as compensation for such violations. In such cases, courts may also apply the provisions of Articles 251-251/2 by declaring the evidence administered to be null and void.

Conclusion. In this regard, we conclude that the role of special investigative measures in criminal evidence-gathering is indisputable. Without the application of special investigative activity it would not be possible to suppress offences at the preparatory or attempted stages, nor to prevent or detect offences falling within the category of serious, particularly serious, or exceptionally serious crimes.

A key role in the conduct of special investigative activity is played by investigation officers, who are legally authorized individuals acting on behalf of the law and within the limits of their competence, and who carry out special investigative measures within the framework of criminal proceedings. These actions must be conducted in strict compliance with the law and must not result in violations of the defendant's procedural or constitutional rights. Otherwise, the court may apply the provisions of Article 94, Articles 251-251/2, or Article 385(4) of the Criminal Procedure Code.

Moreover, during the judicial examination, the state prosecutor must play an active role and, in accordance with Article 373(2) of the Criminal Procedure Code, is required to thoroughly examine the procedural documents recording the results of the special investigative measures and their annexes – including transcripts, photographs, recordings, and other materials – and to highlight those circumstances that may subsequently serve as the basis for a conviction.

Subsequently, it must also be emphasized that a conviction cannot be based solely on the results of special investigative measures, an aspect expressly provided for in Article 93(4) of the Criminal Procedure Code. Additional, evidence must also be administered and relied upon in the judgment, such evidence being the result of criminal investigative

actions conducted for the purpose of evidence gathering, in accordance with Article 93(2) of the Criminal Procedure Code.

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CONCEPTUAL APPROACHES IN THE STUDY OF THE RE-SOCIALIZATION OF YOUNG INMATES

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Summary

The rapid development of today's society has significantly reduced the quality of life and more and younger people are faced with a variety of social, economic, psychological, moral and other problems. The number of young people who commit crimes is increasing day by day, becoming criminals being influenced by psychosocial factors and negative behavioral patterns. The social reintegration of young prisoners, the resumption of prosocial behavior by them is currently a segment that requires increased attention. For this process to be successful, there must also be a social environment open to socialization, resocialization.

Keywords: detention, socialization, education, resocialization, young prisoners, norms, values, personality of young prisoners.

Introduction. The drastic developments taking place in contemporary society severely reduce the quality of life, so that more and more young people are faced with a multitude of social, economic, psychological, moral, etc. problems. Every day the number of young people who commit crimes increases, becoming professional criminals because they are not professionally oriented and motivated, do not have a well-paid job and, respectively, financial resources with which they could support themselves or their family. These young people do not share the general human values, which guide prosocial behaviors and are constantly influenced by psychosocial factors and negative behavioral models, which determine them to obtain sources of income in easier ways for them.

Methods and materials applied. To analyze the process of resocialization of young prisoners, we used a multidisciplinary approach, combining methods from the fields of psychology, pedagogy and sociology. Case studies of young detainees from various penitentiaries in Romania and the Republic of Moldova were complemented with theoretical research on the socialization and resocialization of young offenders. Also, the works of the most important researchers in the field were consulted, including Gh. Florian, S. Rusnac and V. Plămădeală, who have significantly contributed to the understanding of the resocialization process.

Research purpose. The main purpose of the research was to analyze and identify the most efficient mechanisms for the resocialization of young detainees, in order to reduce the recidivism rate and facilitate their reintegration into society. In particular, it was desired to investigate the factors that influence the success of this process and the necessary educational, psychological and social methods.

Discussions and results obtained. Disagreement with existing social norms, lack of

morality, relationship problems, poverty, the tendency to have an easy life without making an effort, provoke young people to criminal behaviors that increasingly often lead to conviction or, more extreme, end in detention.

Detention is a criminal punishment that deprives someone of their freedom for a given period of time [6, p.292]. Detention of young people in prisons is a harsh, extreme measure with considerable repercussions in their lives. And the biggest problems that young prisoners face upon release are resistance and prejudices existing in the social environment that refuses to accept them, integrate them, and repress them.

The social reintegration of young prisoners, the resumption of prosocial behavior by them currently represents a segment that requires increased attention. For this process to be successful, there must also be a social environment open to socialization and resocialization.

Knowing and carrying out a *process of resocialization* of young prisoners is inevitable without exposing the concept of *socialization*, which essentially generates the concept of *resocialization*.

The concept of "*socialization*" is broadly defined as a process through which a human being becomes a member of a society. This learning process makes it possible for a human individual to accumulate knowledge, skills, norms, values, traditions, etc.

According to the pedagogy dictionary, the term "*socialization*" is derived from the Latin "*social*" and from the English "*socialization*". This implies a long-term process through which individuals obtain satisfaction of their daily needs, balanced relationships through rules specific to the culture. Acquisition of the most appropriate behaviors, essential means of understanding, repertoire of attitudes and models of behavior with family and others [5, p.251].

O. Paladi characterizes *socialization* as a process of operational mastery of a set of activity programs and behaviors characteristic of a certain cultural tradition, as well as the process of internalization by an individual of the knowledge, values, and norms that express them [12, p.9].

Socialization is one of the processes absolutely necessary for the normal functioning and development of society and the individual. The process of socialization trains the individual for social stimuli and develops his/her skills and awareness of assuming social obligations.

In the understanding of researcher S. Cemortan [3], the qualitative socialization of any personality is achieved by combining the processes of adaptation, integration, self-development, self-actualization. The success of this process depends on the active position of the individual and his/her assimilation of social experience. In the researcher's opinion, human socialization has two essential stages:

- Initial, primary socialization, which begins in the family, childhood;
- Continuous socialization, which is carried out throughout life [3, p.7].

According to O. Bejan's vision: "socialization as a process of internalizing prosocial norms and values has become the main object of numerous studies, both theoretical and experimental, especially for pedagogy, psychology, sociology, philosophy, anthropology, criminology. Personality formation is the result of a complex process of socialization, in which personal, environmental and cultural factors interact. Socialization, in a broad sense, means transforming an individual from an asocial being into a social being, inculcating in him ways of thinking, feeling, acting" [1, p.54]. As an independent scientific di-

rection, socialization took shape only at the end of the 19th century, being studied mainly by two scientific fields – sociology and anthropology. Representatives of these fields of knowledge tried to describe, explain and scientifically apply this concept for research purposes. Among the first works in which the concept of socialization is attested are those of E.A. Ross "*Social control*" (1896); F.G. Gooddins "*Theory of Socialization*" (1897); E. Burgess "*The Significance of Socialization in the Social Revolution*" (1916), where the authors express the conviction that through the process of socialization, society exercises considerable power over its new members, whom it teaches how they should behave [17].

The process of socialization has become the main object of numerous studies, both theoretical and experimental, starting more with the 50^{s} of the last century, and the increased interest in this phenomenon contributed to the addition in 1956 of the term "*socialization*" to the register of the American Sociological Association. Studies on the socialization of young people in different cultures (R. Benedict, F. Boas, M. Mead) aimed at the analysis of social processes, invoking the fact that socialization is influenced by the class structure, religion, social castes, the value system, and the morality of the individual [17].

A special contribution to the study of the socialization process of young people can be found in the Russian researchers B.G. Ananyev, A.G. Asmolov, L.I. Bozhovich, I.S. Kon, M.I. Lisina, A.A. Rean, Ya.L. Kolominsky, N.M. Platonova who treat this concept as: the process of assimilation by a person of the experience and social relations of the environment in which he was born and grows up; the assimilation of elements of culture, social norms and values, on the basis of which personality traits are formed; the assimilation of social experience through involvement in the social environment, in the system of social relations; the process of assimilation of social norms that have become an inevitable part of life as a result of the internal need to follow them [17].

Researcher G.M. Andreeva approaches *socialization* as a process of an individual entering the social environment, assimilation by him of social influences, his introduction into the system of social ties [18, p.15].

In his works, B.G. Ananyev [19], evokes the fact that *socialization* is broadly a two-way process, that is, it forms the individual as a person and as a subject of activity. The ultimate goal of this socialization process focuses on several aspects:

– formation of knowledge about people, society and about oneself;
– development of practical skills;
– development of norms, roles, positions;
– development of attitudes, value orientations;
– inclusion in practical activities [2, p.45].

Socialization of youth is the process and result of the individual's active assimilation and subsequent reproduction of social experience. The content of the socialization process of youth consists of *values*, *norms*, *attitudes*, *social skills*, *behavioral patterns*. Thus, we can conclude that the socialization of young people is a process that includes in itself, the internalization of values and norms, knowledge of the elements of culture.

In order for the socialization of young people to be successful, it is necessary to take into account the following aspects:

• the present sociocultural indicators, the values and norms transmitted to those around them;
• the hierarchy and priority of certain social values;
• the attitudes of young people towards social norms, rules and values (acceptance,

manipulation, rejection, etc.);

- the sociometric status in the peer group, communication with them;
- social maturity, responsibility, patience, self-development;
- critical thinking, positive thinking;
- the level of development of self-esteem and claims;
- the interdependence of ideal and real goals;
- the hierarchical structure of value orientations;
- the level of adaptation of young people to the norms of social behavior.

In organizing the socialization process of young people, the methods of communication and interrelationship, of motivational-affective modeling of the individual are of great importance. As has been established, the mechanisms of socialization are: *modeling, learning and social control.*

Social modeling is based on the need to belong to a group. Through modeling, social skills, attitudes, habits, and behaviors are formed.

Social learning is a form of human learning, through which the young person acquires the values and norms of the social group.

Social control is a relationship of the young person to social norms and values. The relationship to the social environment, the projection towards others lead to the acceptance and internalization of norms, values, standards, which the young person transforms into rules of personal behavior and which facilitate not only self-understanding, but also knowledge of others and communication with them.

Due to social transformations and cultural changes of today's youth, the use of *education* in their socialization is the main condition for ensuring the development of personality in the process of becoming fully human. The phenomenon of becoming fully human is defined by socialization as a process of transmission, assimilation of attitudes, values, and behavioral patterns specific to a group or community in order to adapt and integrate a person socially. In this sense, socialization is an interactive process of communication, a personal way of interpreting messages and social influences.

The relationship between the concepts of "*socialization*" and "*education*" is quite complex.

Education is understood as "the impact on a person of the entire system of social relations in order to assimilate social experience, which is socialization" [5, p.234].

In the understanding of S. Cristea "education as a product reflects a necessity of a social nature, which guides the activity of formation-development of the human personality. Education appears as a product of social relations" [4, p.108].

Education, in the opinion of researchers E. Zolotariov and M. Mihailov is a deliberate, formalized and controlled process of *socialization*. Thus, *education* represents the regulation and orientation towards specific goals of the socialization process, including specific mechanisms for accelerating the socialization process. With the help or through education, the negative consequences of socialization are overcome or mitigated and receive a humanitarian orientation [17, p.7].

Education contributes to the socialization of the individual in the real world and is a way to achieve it. Education is a key component, a fundamental constituent of socialization, because it allows for a faster acquisition of the complex of the most important social values and norms. According to scientists A.A. Rean, I.L. Kolominsky, there is a difficulty in delimiting the concepts of socialization and education, they actually cannot be separated.

The authors reveal that education, in essence, is a controlled and intentional process of socialization, and socialization is possible both as an intentional process and as an uncontrolled, unregulated process [22].

Socialization of the individual is a broader process than the process of education.

Education, in the view of G.M. Andreeva, can be understood as a process of intentional influence on a person by the subject of the educational process in order to transfer, instill in him a certain system of concepts, norms, values, etc. [18, p.335].

Fulfilling the relationship between socialization and education is quite difficult, but it allows establishing achievable delimitations of these processes and concretizing their roles. Thus, taking into account various points of view and ways of relating one concept to the other, it can be noted that *socialization* and *education* differ in that:

education is not reduced only to the results of socialization, but also aims at the optimal development of the individual in relation to his native or acquired potentialities;

education targets several aspects of personality development, sometimes less important in terms of the social development of individuals (for example, general culture acquisitions, factual data, cultivation of independent study skills, cultivation of aesthetic taste, etc.), while socialization targets those contents and capacities with explicit relevance in social interactions. However, we can say that the purpose of socialization, that of integrating the individual into the community, is achieved through education. The more effective the education is, the better the individual is integrated into the value universe of the social space in which he lives. The ineffectiveness of education, its artificiality, generates difficulties in adaptation and social integration, dissatisfaction and exposure to the risk of social failure [12, p.36].

Education thus contributes decisively to the achievement of socialization, respectively to the process of transmission and assimilation by the individual of attitudes, values and behaviors specific to the conditions of social existence, being one of the most important mechanisms of socialization.

As a component of the continuous process of socialization is resocialization.

Youth socialization is a process through which the individual acquires and internalizes social norms and values, prosocial behavioral models, and respective attitudes, becoming members of a community or a social group, while resocialization has more difficult tasks and faces major problems.

Detaining young people (18-25 years old) in prisons is an extreme measure, as it has major psychological and social consequences in their lives. This is why restoring lost social status, as well as reorienting towards prosocial behavior, is the primary goal of resocialization.

For a better clarification of the concept of resocialization, we propose a synthesis of significant contributions to the evolution and approach of the concept in various academic spaces, highlighting the opinions of the authors representative of our research.

Table 1.1. Evolution and relevant approaches in the development of the concept of resocialization

Year / author	Conceptual definitions
	Approach to the concept of resocialization international academic space

1973 **A. Kennedi, D. Kerber** [26]	For the first time they include the concept of "*resocialization*" in their work "*Resocialization: An American Experiment. New York: Behavioral Publications*" from 1973, with reference to the integration of an individual into the sociocultural environment, as a result of the lack of socialization (resocialization of prisoners in places of deprivation of liberty), or a change in the sociocultural environment.
1976 **A. Bandura** [25]	Describes the concept of "*resocialization*" as a process that strongly profiles the manifestation of prosocial behavior, the expression of values, knowledge and social experience held.
1979 **L. Sechrest, S.O. White, E.D. Brown** [26]	Estimates "*resocialization*" as a consequence of intentional, programmed interference, which aims to mitigate the corrective conduct of a person, achieved by changing the personality traits, values, and behavior.
2004 **E. Goffman** [10]	Presents "*resocialization*" as a radical process of shaping and rebuilding the roles of an individual and his socially constructed self, which requires control, since it often takes place in strictly controlled social systems.
	Approach to the concept of resocialization in the Russian academic space
1992 **А.В. Пищелко** [21]	Exposes "*resocialization*" as a complex means of social control used in specialized institutions and groups associated with some punitive sanctions on those who have violated socially desirable norms and values.
1993 **Т.Г.Татидинова** [24]	Appreciates "*resocialization*" as an adjustment of the prisoner's behavior to various environments with observance of the law and socially recognized norms.
1998 **В.И. Поздняков** [22]	Considers "*resocialization*" as a process by which an individual assimilates the rules of social behavior, expressing expansive qualities that he did not previously become aware of and manifest, or that he did not fully possess.
2005 **Н. Крайнова** [20]	Defines "*resocialization of the prisoner*" as a process of restoring the individual as an integrated member of society, following the application of a complex of legal, social-organizational, psycho-pedagogical, educational measures in order to prevent the commission of new illegal acts".
2005 ***В.И. Дробышев*, А.В. *Чернышева*** [19]	Examines "*resocialization*" as a means aimed at combating the asocial degradation of the prisoners' personality.
	Approaching the concept of resocialization in Romania

1995 **R.M. Stănoiu** [16]	Describes "*resocialization*" as a process that aims to reform the prisoners' personality, improve their reactionary tendencies, restore motivation, change attitudes in order to prevent recidivism and facilitate the prisoners' social reintegration into the social environment.
1999 **Gh. Florian** [8]	Presents "*resocialization of prisoners*" as the acquisition of prosocial norms and values where values occupy a central position in the prisoners' personality structure.
2000 **Gh. Nistoreanu, C. Păun** [11]	Approaches "*resocialization*" as a process of crime prevention, which involves the application of a set of measures of a social, cultural, economic, political, administrative and legal nature, intended to prevent the commission of antisocial acts, by identifying, neutralizing and eliminating the causes of the criminal phenomenon.
2005 **M. Foucault** [9]	Approaches "*resocialization*" as the purpose of applying punishment that goes beyond the stage of a correction applied to the offender, aiming to achieve an objective with long-term results, namely the individual's abandonment of a way of life based on breaking the law and achieving important psychological transformations.
2009 **I. Durnescu** [7]	Considers "*resocialization*" as a process of correcting the convict (detainee) by cultivating a respectful attitude towards legal and moral norms.
	Approaching the concept of resocialization in the Republic of Moldova
2000 **S. Rusnac** [14]	Presents "*resocialization*" as a process that involves the assimilation of social values, norms and insertion into the system of social roles, which transforms the individual into a social agent, into a person who treats reality adequately to the demands of the community and behaves in accordance with social expectations.
2010 **O. Rusu** [15]	Considers "*resocialization*" a process of reorientation and integration into social life of individuals who have promoted marginal or deviant behaviors, with the aim of recovering and reintegrating delinquents into society and assimilating accepted norms, values and attitudes by them.
2017 **V. Plămădeală** [13]	Approaches "*resocialization*" as support for a good social and professional reintegration of prisoners, as an aid in self-actualization and solving problems related to their social situation or personal life.

The concept of resocialization is also approached through the lens of scientific fields, emphasizing several theoretical perspectives.

From a psychopedagogical point of view – resocialization involves a deliberate, complex system of educational influence aimed at overcoming asocial behaviors by the individual with social maladjustment and acquiring moral models of prosocial behavior and activity, resulting in the conscious modification of behavior in a new socio-cultural situation,

achieved through the integration of the individual with behavioral problems into society.

From a social pedagogy point of view – resocialization signifies a transition from an antisocial state to a state of social adaptation, being associated with the search for institutions and agents that allow optimizing this process as much as possible.

From a legal point of view – resocialization is understood as a process of re-engaging the former prisoner in a system of values that exists in society.

In order to avoid recidivism, the resocialization of prisoners is needed.

Resocialization through education is aimed at prisoners whose personality has suffered a maladjustment to the system of norms and values generally accepted by society.

The resocialization of young prisoners is a complex process, which involves several stages of intervention: educational, psychological and social. The research results showed that, in order to be effective, resocialization must include an integrated program that takes into account the following aspects:

– *Education and vocational training*. Young prisoners must have access to education and vocational training, in order to be able to build an independent and respectable life after release. Studies have shown that young people who benefit from such programs have much greater chances of successfully reintegrating.

– *Psychological support and counseling*. Psychological factors are essential in the resocialization process. Many young prisoners suffer from traumas from childhood or from their life before detention, which affects their perception of society and their behavior. Therefore, psychological counseling is a key element in the reintegration process.

– *Post-detention social support*. After release, young people face significant barriers in the process of social reintegration. Prejudice and discrimination are important barriers that must be overcome by creating reintegration programs and community support.

– *Positive behavioral models*. Another important aspect is the use of positive role models, either from other prisoners who have managed to reintegrate, or from educators and counselors who play a crucial role in the resocialization process.

Conclusions. The resocialization of young prisoners is an essential process for preventing recidivism and facilitating their reintegration into society. The implementation of an integrated system of education, psychological counseling and social support can significantly contribute to the success of this process. It is imperative that society reconsider its attitude towards young people in detention and assume responsibility in providing a conducive framework for their reintegration. Only through a concerted and sustained effort, both by state institutions and by the community, can sustainable results be achieved in the process of resocializing young prisoners.

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SOME THEORETICAL AND PRACTICAL CONSIDERATIONS REGARDING NON-CUSTODIAL PREVENTIVE MEASURES

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Summary

In criminal proceedings, non-custodial preventive measures represent the expression of respecting the principles of proportionality and the presumption of innocence. This paper analyzes the legal regulation, conditions of application, and effectiveness of such measures, highlighting problematic aspects in judicial practice and emphasizing the need to improve the current normative framework. Concrete lege ferenda proposals and practical solutions are formulated to ensure the uniform application of these measures.

Keywords: preventive measures, judicial control, bail, proportionality, liberty, criminal proceedings, fundamental rights, non-custodial, criminal procedure, jurisprudence.

Introduction. In the architecture of the criminal process, preventive measures are intended to prevent the suspect or defendant from evading criminal prosecution, to ensure the proper conduct of the criminal proceedings, or to prevent the commission of new offenses. While custodial measures represent the *ultima ratio*, contemporary legislation places particular emphasis on the application of non-custodial preventive measures to guarantee respect for the fundamental rights of individuals.

The importance of non-custodial preventive measures derives both from the perspective of the principle of humanism and the protection of human dignity, as well as from the application of the principle of subsidiarity.

Methods and materials applied. The study on non-custodial preventive measures was conducted using a complex methodological approach, based on a comparative analysis of national and international legislation, as well as a theoretical and practical examination of the applicability of these measures in the criminal justice system of the Republic of Moldova.

The following research methods were used in this study:

• *Legal analysis method* – used to examine the normative framework in the Republic of Moldova regarding non-custodial preventive measures, as well as to compare it with other European legal systems.

• *Comparative method* – allowed the identification of strengths and limitations of existing regulations by referencing legislative models from the European Union and other relevant jurisdictions.

• *Sociological method* – statistical data were analyzed regarding the application of non-custodial preventive measures in the Republic of Moldova and their impact on recidivism rates.

• *Empirical method* – involved investigating judicial practices, including the study of relevant court decisions, to observe trends and the effectiveness of the applied measures.

• *Historical method* – used to analyze the evolution of regulations on non-custodial preventive measures in the Republic of Moldova and other European states.

• *Inductive and deductive methods* – enabled the formulation of general conclusions on the effectiveness of alternative custodial measures, based on specific cases and regulations.

Materials used. To develop this study, multiple relevant sources were analyzed, including:

• *Normative acts* – The Criminal Procedure Code of the Republic of Moldova, European and international legislation on preventive measures;

• *Doctrinal works* – monographs, treatises, and scientific articles by experts in criminal and procedural law;

• *Judicial decisions* – relevant rulings from national and international courts regarding the application of non-custodial preventive measures;

• *Studies and reports* – statistical analyses and studies published by national and international legal research institutions;

• *International regulations* – conventions and recommendations from the Council of Europe and other international organizations relevant to human rights and criminal justice.

The use of these methods and materials allowed for an in-depth approach to the topic, facilitating the proposal of viable solutions for the development of the legislative framework and judicial practices in the field of non-custodial preventive measures.

I. Regulation of non-custodial preventive measures. Non-custodial preventive measures represent a crucial legal mechanism in the architecture of criminal proceedings and are provided for in the Criminal Procedure Code of the Republic of Moldova under Article 191 and subsequent provisions [1]. These measures reflect compliance with the fundamental principles of criminal procedural law, such as the presumption of innocence, proportionality, necessity, and subsidiarity [2].

1. Types of non-custodial preventive measures. According to current regulations, Moldovan criminal procedural legislation establishes two types of non-custodial preventive measures:

– Judicial supervision;

– Judicial supervision on bail.

These measures are applicable both during the criminal investigation phase and the trial phase, upon the proposal of the prosecution authorities or ex officio by the court, being ordered through a reasoned ruling. They involve certain restrictions on the defendant's rights without depriving them of liberty and are applied only if the objectives of the criminal proceedings cannot be achieved through other less restrictive means.

2. General conditions for the application of non-custodial preventive measures. For a non-custodial preventive measure to be imposed, the legislator requires the cumulative fulfillment of the following conditions:

• There is evidence or reasonable suspicion that the defendant has committed a crime;

• There is a concrete risk that the defendant may evade prosecution or trial, obstruct the proper conduct of the criminal process, or commit other crimes;

• The measure must be proportional to the seriousness of the offense and the degree of social danger posed;

• No other sufficient, less restrictive measures exist.

It should be emphasized that the current regulations align with the provisions of Article 5 of the European Convention on Human Rights (ECHR), which guarantees the right to liberty and security and obliges judicial authorities to apply custodial preventive measures only as an exceptional measure [3, pp.7-9].

3. Judicial supervision – content and regulation. Judicial supervision is regulated under Articles 192-193 of the Criminal Procedure Code. This measure consists of imposing certain obligations on the defendant without depriving them of liberty but enforcing necessary restrictions.

Among the main obligations that may be imposed on a defendant under judicial supervision are:

– To appear before the prosecuting authority or the court whenever summoned;

– To notify any change of residence;

– Not to leave the locality or country without judicial authorization;

– To avoid contact with witnesses, other defendants, or persons involved in the case;

– Not to practice the profession or activity through which the crime was committed.

The legislator has granted the court or the prosecution body a certain margin of discretion in determining these obligations, adapting them to the specific circumstances of each case. Additionally, according to Article 194 para.(3) of the Criminal Procedure Code, the defendant may request the removal or modification of the imposed obligations.

The duration of judicial supervision is a maximum of 60 days, which can be successively extended, without exceeding the general term established for preventive measures (one year or two years, depending on the severity of the offense).

4. Judicial supervision on bail – regulation and particularities. Regulated under Articles 195-197 of the Criminal Procedure Code, judicial supervision on bail essentially involves the same category of obligations as standard judicial supervision, with the key difference being that the defendant must also provide bail.

Bail serves as a financial guarantee and can be deposited either as a sum of money or through real guarantees (assets). The amount of bail is determined by the judicial authority, taking into account the circumstances of the case, the nature of the offense, the defendant's financial situation, and the degree of social danger posed.

If the defendant complies with the imposed obligations, the deposited bail amount is refunded at the end of the criminal proceedings. Conversely, non-compliance results in the forfeiture of the bail and, where applicable, the replacement of the measure with a more severe one.

Judicial supervision on bail reflects a modern approach to criminal proceedings, offering a balanced mechanism between preventing potential abuses and ensuring the defendant's freedom.

5. Characteristics and advantages of non-custodial preventive measures. The application of non-custodial preventive measures offers numerous advantages:

• *Respect for the presumption of innocence* – the individual is not deprived of liberty before conviction;

• *Reduction of costs for the penitentiary system* – avoiding the overcrowding of detention centers and prisons;

• *Avoidance of negative effects of detention* – on the personal and social life of the defendant;

• *Adaptability* – through the possibility of adjusting the imposed obligations during the proceedings.

Legal scholars have emphasized that the predominant application of non-custodial preventive measures reflects the level of humanism in the criminal procedural system and its alignment with the requirements of a democratic rule of law [4].

6. Compliance with European standards. It is important to note that the European Court of Human Rights (ECtHR) consistently emphasizes that custodial preventive measures should be applied only exceptionally, with the state being required to justify the necessity and proportionality of each measure imposed. In this regard, non-custodial preventive measures align with ECtHR jurisprudence, particularly with the rulings in Letellier v. France and Mooren v. Germany [5; 6].

II. Judicial practice and problematic aspects regarding the application of non-custodial preventive measures. The analysis of national judicial practice reveals both positive aspects and deficiencies that require correction to ensure the efficient and uniform application of non-custodial preventive measures. Despite the clear legal framework provided by criminal procedural legislation, certain tendencies and inconsistencies in practice jeopardize the purpose of these measures and, consequently, the fundamental rights of individuals.

1. Excessive preference for custodial measures. A primary issue observed in judicial practice is the predominant application of custodial preventive measures (especially pre-trial detention), even in cases where legal conditions would allow for non-custodial measures, such as judicial supervision or bail.

This practice is fueled by the perception that deprivation of liberty is a "safer" option for ensuring the proper conduct of criminal proceedings. However, such an approach contradicts the principles established by the European Court of Human Rights (ECtHR), which states that pre-trial detention should be a last resort, justified only when other measures have proven insufficient [7].

In several recent cases, courts have justified the extension of pre-trial detention through generic references to the severity of the offense or the presumed risk of witness tampering, without concretely assessing whether judicial supervision or bail would be sufficient to mitigate these risks.

2. Formalistic justification of imposed measures. Another problematic aspect is the superficial or formalistic reasoning in court rulings ordering non-custodial preventive measures. In many instances, judicial decisions merely reiterate the legal text without conducting a detailed analysis of:

• The personal circumstances of the defendant (age, occupation, family situation, criminal record);

• The severity and concrete nature of the offense;

• The actual and justified risk that the defendant might commit other crimes or obstruct the proceedings.

• This lack of individualization contradicts both the principles of a fair trial and the requirements established by the Decision No.213 of June 2, 2020 of the Constitutional Court of the Republic of Moldova, which mandates detailed and specific justification of preventive measures.

3. Lack of predictability in setting bail amounts. Regarding judicial supervision on bail, judicial practice reflects a lack of coherence and predictability in determining the amount of bail. In some cases, the imposed sums are excessive relative to the defendant's financial situation, effectively rendering the measure inapplicable and amounting to a de facto denial of this option.

Legal scholars have emphasized the need for clear criteria in evaluating bail amounts, ensuring they remain accessible, are not prohibitive, and serve their preventive rather than repressive purpose [8].

4. Lack of effective alternative measures. Compared to other European legal systems, the legislation of the Republic of Moldova does not provide for modern alternative preventive measures, such as electronic monitoring (electronic bracelet), location restrictions, or mandatory participation in social reintegration programs.

This legislative gap limits the options available to courts, forcing them to choose between restrictive or custodial measures without access to flexible tools adapted to the defendant's actual social danger level.

5. Deficiencies in monitoring non-custodial preventive measures. Another issue identified in judicial practice is the inadequate monitoring of compliance with obligations imposed under judicial supervision or judicial supervision on bail. In some cases, ineffective collaboration between courts, prosecutors, and law enforcement agencies has led to delays or the inability to promptly and effectively sanction breaches of these obligations.

III. Proposals for the unification and efficiency of judicial practice. Given the identified deficiencies, we consider it necessary to:

– Provide continuous training for judges and prosecutors on ECtHR standards applicable to preventive measures and promote relevant case law;

– Introduce clear legislative criteria for determining bail amounts, taking into account the defendant's income and actual assets;

– Diversify non-custodial preventive measures by adopting regulations on electronic monitoring, mandatory treatment, or specialized counseling obligations;

– Strengthen cooperation between courts, prosecutors, and law enforcement agencies to ensure effective monitoring of compliance with imposed measures;

– Mandate concrete and detailed reasoning for each court ruling imposing a preventive measure, ensuring compliance with the principles of legality, necessity, and proportionality.

Conclusions and proposals de lege ferenda. In modern criminal proceedings, non-custodial preventive measures must take a central place, as they represent an expression of a fair, balanced, and efficient criminal justice system that respects fundamental human rights. The study of the regulation and practice of applying these measures in the Republic of Moldova highlights both considerable progress and multiple shortcomings, requiring a coherent and systemic legislative and practical revision.

Based on the conducted analysis, we reach the following conclusions:

• Non-custodial preventive measures are essential for respecting the presumption of innocence and reducing the excessive application of pre-trial detention, which should be a measure of last resort, in accordance with the jurisprudence of the European Court of Human Rights.

• Judicial control and bail-based judicial control provide authorities with efficient and flexible tools to ensure the proper conduct of criminal proceedings without dispro-

portionately affecting individual freedom.

• However, current judicial practice presents significant deficiencies, including an unjustified preference for custodial measures, brief reasoning for imposed measures, a lack of clear criteria regarding bail, and insufficient monitoring of compliance with obligations.

• Additionally, the absence of modern alternative measures, already successfully used in other European systems, limits the courts' options and hinders the application of a modern and humane criminal policy.

Considering the above, we propose the following concrete directions for legislative and practical reform:

1. *Introduction of alternative preventive measures*. We propose supplementing the Criminal Procedure Code of the Republic of Moldova by expressly regulating alternative preventive measures, such as:

• Electronic monitoring (tracking the accused using electronic devices – ankle bracelet);

• Prohibition from accessing certain places or participating in specific events;

• Mandatory participation in rehabilitation programs, psychological counseling, or treatment (especially in cases of offenses committed under the influence of alcohol or narcotic substances).

• The introduction of these measures would contribute to a more flexible criminal justice response and a reduction in the number of individuals placed in pre-trial detention.

2. *Establishment of objective and predictable criteria for bail*. Legislation should establish clear factors to be considered when determining the amount of bail:

• The defendant's income and real assets;

• The nature and severity of the offense;

• The risk of flight or committing other offenses;

• Ensuring that the amount serves as a real guarantee but is not excessively prohibitive.

Additionally, we recommend introducing a simplified procedure for reviewing bail amounts at the defendant's request when significant changes occur in their financial situation.

3. *Obligation for detailed and personalized reasoning*. A more rigorous regulation is needed to require judges to provide concrete, precise, and individualized reasoning for each imposed preventive measure, including non-custodial measures. The current formal reasoning model, based on mere repetition of legal provisions, must be eliminated, as it contradicts both national principles and the standards of the ECHR [9].

4. *Strengthening interinstitutional cooperation*. We propose consolidating cooperation and communication between courts, prosecutors, and law enforcement authorities to ensure strict monitoring of compliance with obligations imposed through non-custodial preventive measures. A uniform procedural framework should be developed for rapid reporting of non-compliance, allowing judicial authorities to respond promptly.

5. *Awareness campaigns and continuous professional training*. To change the cultural perception of preventive measures, periodic seminars and training courses should be organized for judges, prosecutors, and defense attorneys, aimed at:

• Familiarizing them with best European practices;

• Promoting the use of non-custodial preventive measures as the general rule;

• Emphasizing the importance of detailed reasoning and compliance with the principle of proportionality.

Conclusion. Improving the regulation and application of non-custodial preventive measures is imperative for modernizing criminal proceedings and aligning them with European and international standards on human rights protection.

Implementing the proposed reforms will contribute to the development of an efficient, humane, and fair criminal justice system, which protects both the interests of society and individual rights.

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ARREST AS AN EXCEPTION FROM EXERCISE OF THE RIGHT TO LIBERTY AND SECURITY IN THE LIGHT OF ECTHR JURISPRUDENCE*

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Summary

This article examines arrest as an exception to the right to liberty and security, as guaranteed by Article 5 of the European Convention on Human Rights (ECHR), through the lens of the European Court of Human Rights' (ECtHR) jurisprudence. It outlines the legal standards developed by the Court to prevent arbitrary and unlawful detention, focusing particularly on the requirements of lawfulness, necessity, proportionality, and judicial oversight. The research pays special attention to the exhaustive and strictly interpreted exceptions permitted under Article 5 § 1, the requirement of reasonable suspicion under Article 5 § 1 (c), and the guarantee of a speedy judicial review under Article 5 § 4. The analysis is grounded in the detailed study of the ECtHR judgment in the case of O.P. vs. Republic of Moldova, where the Court found multiple violations of the applicant's rights due to insufficient evidence for arrest, failure to ensure procedural guarantees, and delays in judicial review. The case exemplifies systemic shortcomings in domestic detention practices.

Keywords: arrest, liberty and security, pre-tail detention, ECtHR jurisprudence, reasonable suspicion, arbitrary detention.

Introduction. Individual liberty represents a supreme value of contemporary society and the foundation for the exercise of other rights and freedoms, guaranteeing the individual's ability to act autonomously and free from any form of excessive or repressive control. Individual freedom is the basis of democratic society and is incompatible with totalitarian or authoritarian rule. It protects the individual from abuse and excessive control of authorities and is a characteristic feature of the rule of law in the democratic democracy. At the same time, individual liberty makes possible the realization of other constitutional rights, such as the right to the free development of human personality, the right to work, the right to education, the right to rest, the right to private and family life, etc. The importance of the right to individual liberty cannot be overestimated.

Individual liberty is proclaimed and protected by universal and regional human rights standards, and is governed by Art.3 of the Universal Declaration of Human Rights (1948) [1], Art.9 of the International Covenant on Civil and Political Rights (1966) [2], Art.5 of the European Convention on Human Rights (ECHR, 1950) [3], and Art.6 of the Charter of Fundamental Rights of the European Union (2000) [4]. The Constitution of the Republic of Moldova guarantees the right to individual liberty and security of person in Art.25 [5].

Unlike other human rights standards, the exercise of the right to liberty and secu-

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rity of person, in accordance with the provisions of the European Convention on Human Rights, may be limited in certain cases expressly provided by the Convention. According to the Convention's provisions, this right could be limited in the certain circumstances: detention of a person after conviction by a competent court (Art. 5 (1)(a)); non-compliance with a lawful court order or to fulfill an obligation prescribed by law (Art.5 (1)(b)); preventive detention of a person reasonably suspected of having committed an offense or to prevent their committing an offense or fleeing after having done so (Art.5 (1)(c)); detention of a minor by lawful order for educational supervision or for bringing him before a competent authority (Art.5 (1)(d)); detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics, drug addicts, or vagrants (Art.5 (1)(e)); lawful detention of a person to prevent their unauthorized entry into the country or of a person against whom deportation or extradition proceedings are pending (Art.5 (1)(f)) [3].

We could conclude that ECHR regulates different cases that permit the restriction of the exercise of the right to liberty of person. In this article we would like to analyze the arrest as an exception from the exercise of the right to liberty and security in the light of the European Convention of Human Rights and ECtHR jurisprudence.

Methods and materials applied. This research adopts a qualitative, doctrinal legal methodology, aiming to analyze the legal standards governing the right to liberty and security under Article 5 of the European Convention on Human Rights, with a particular emphasis on the conditions under which arrest may be considered lawful and proportionate as interpreted by the European Court of Human Rights (ECtHR). The study is structured around the normative and jurisprudential analysis of the legal framework and its application in practice. The research method involves normative framework analysis, presenting a comprehensive examination of Article 5 of the ECHR, particularly paragraphs 1 (c), which establishes the right to liberty and the exceptions permitting lawful arrest and detention. The analysis is supported by relevant provisions of the Convention, general principles of human rights law, and interpretative guidance from the ECtHR.

The core of the research lies in the jurisprudential analysis of the European Court of Human Rights' interpretation of Article 5. This includes the identification of key legal standards and principles established in ECtHR case law (e.g., requirements of legality, necessity, proportionality) and examination of how these standards are applied in practice, especially regarding arrest as an exceptional measure in a democratic society governed by the rule of law.

In this study, we analyzed one ECtHR judgments against the Republic of Moldova – Case of O.P. vs. the Republic of Moldova (Application No.33418/17) [6]. This decision is selected because it is the most recent one, in this cases Court established the violation of the Art.5 para.(1) let.(c) by the Moldovan authorities and its relevance in illustrating deficiencies in domestic arrest practices. This case is analyzed to assess the factual background, legal arguments, and findings of the Court, identify how the ECtHR applied Article 5 criteria to the specific context of Moldova.

Discussions and results obtained. According to the provisions of the Convention, the Art.5 para.(1) let.c) could be applied in the three different circumstances: 1. Preventive detention of a person reasonably suspected of having committed an offense, which refers to the arrest of the person suspected of committing a crime; 2. To prevent the person to commit an offense, in this case being presented the evidence the this person

plans to commit another crime; 3. To prevent the person to flee after committing the offense, being presented the evidences that the person plans, for example, to go abroad to avoid criminal liability for committing the crime. So, the authorities have the right to limit the liberty of person, if reasonable suspect he or she committed the crime. The national authorities examine this case and present evidence that this crime was committed by this person. At the same time, the arrest could be applied where no offense has been committed, but the authorities have real evidence that this person planned to commit the crime, know the victims, the modality to commit the offence and the period of time, when it should be committed. Another case in which authorities could arrest the person is the person's attempt to hide after committing the crime to avoid criminal liability. In this case, authorities should prove that person has planned, for example, to go abroad, or try to illegally change the documents in order not to be identified by criminal investigation bodies.

According to the jurisprudence of the ECtHR, the limitation of the right to liberty and security of the person, under the provisions of the Art.5 para.(1) let.(c) could be realized "*for the purpose of bringing him before the competent legal authority*" qualifies all the three alternative bases for arrest or detention under Article 5 § 1 (c) [7]. The ECtHR has clarified that this purpose clause is essential. Arrest or detention under this provision is not legitimate in the abstract; it must be linked to a concrete legal process aiming to hold the person accountable for an actual or suspected criminal offense.

A person may be detained under the first limb of Article 5 § 1 (c) only in the context of criminal proceedings, for the purpose of bringing him before the competent legal authority on suspicion of his having committed an offence [8]. This reinforces the idea that Article 5 para.(1)(c) is intrinsically tied to criminal proceedings. The "reasonable suspicion" of having committed a criminal offense is the minimum threshold for lawful arrest or pre-trial detention. The suspicion must be objective and based on specific facts or information. Vague accusations, general preventive reasons, or administrative convenience are not sufficient grounds under Article 5 para.(1)(c).

Pre-trial detention is capable of operating as a preventive measure only to the extent that it is justified on the grounds of a reasonable suspicion concerning an existing offence in relation to which criminal proceedings are pending [9]. So, pre-trial detention may have a preventive function, but that function is strictly subsidiary to the core requirement: a reasonable suspicion regarding a specific, existing criminal offence. States cannot justify pre-trial detention solely on preventive or speculative grounds and there must be an existing criminal case and a legitimate intention to proceed with criminal justice measures. According to this provision, detention becomes unlawful if it serves other purposes, like general deterrence, political pressure, or administrative ease.

According to the Convention, arrest as the restriction of humans' right could be applied based on the following principles: the limited aim of the arrest, which refers to the bringing the person before a court; the presence of the legal authority that order the application of deprivation of liberty to the person; the connection to criminal proceeding.

The second alternative of that provision ("when it is reasonably considered necessary to prevent his committing an offence") does not permit a policy of general prevention directed against an individual or a category of individuals who are perceived by the authorities as being dangerous or having the propensity to commit unlawful acts. This ground of detention does no more than afford the Contracting States a means of prevent-

ing a concrete and specific offence as regards, in particular, the place and time of its commission and its victim(s). In order for a detention to be justified under the second limb of Article 5 § 1 (c), the authorities must show convincingly, that the person concerned, would in all likelihood have been involved in the concrete and specific offence, had its commission not been prevented by the detention [10].

This means that preventive detention cannot be based on vague suspicions, stereotypes, or general beliefs about an individual's character, reputation, or past behavior. States are not permitted to detain someone simply because they are seen as "potentially dangerous". Instead, Article 5 para.(1)(c) requires that the threat of offending must be concrete and specifically related to an identifiable future offence, at a specific place and time, and even concerning specific potential victims. Preventive detention is only justified if the state can credibly demonstrate that the individual would almost certainly commit a specific offence, if he is not detained. The burden of proof is high: speculative risks or hypothetical dangers are not sufficient. This is a crucial safeguard against arbitrary detention and abusive practices such as preventive arrests during protests, elections, or public unrest, based on mere assumptions about future behavior.

At the same time, the object of questioning during detention under sub-paragraph (c) of Article 5 § 1 is to further the criminal investigation by way of confirming or dispelling the concrete suspicion grounding the arrest [11]. Any detention under Article 5(1)(c) must serve a legitimate procedural function, such as verifying or dispelling the reasonable suspicion that gave rise to the arrest. The authorities cannot use detention for punitive or administrative purposes (e.g. to intimidate or silence someone).

It is incumbent on the domestic authorities to convincingly demonstrate that detention is necessary. Where the authorities order the detention of an individual pending trial on the grounds of his or her failure to appear before them when summoned, they should make sure that the individual in question had been given adequate notice and sufficient time to comply and take reasonable steps to verify that he or she has in fact absconded [12]. The necessity test under the second limb of Article 5 § 1 (c) requires that measures less severe than detention have to be considered and found to be insufficient to safeguard the individual or public interest. The offence in question has to be of a serious nature, entailing danger to life and limb or significant material damage. In addition, detention should cease as soon as the risk has passed, which called for monitoring, the duration of the detention being also a relevant factor [13].

Authorities must justify why detention is strictly necessary, meaning they should prove that the individual knew about the summons (if detained for failure to appear), should prove that less intrusive measures (e.g. bail, house arrest, surveillance) were considered and found to be insufficient, and should demonstrate that the offence in question is serious (threatening life, health, or causing serious damage). This reflects the principle of proportionality: detention should be a last resort, not a first or routine measure. Even where preventive detention is justified, it must not be indefinite. Its duration must be monitored and linked to the actual risk. If the risk of the individual committing the offence diminishes or disappears, detention must end immediately.

At the same time, a "reasonable suspicion" that a criminal offence has been committed presupposes the existence of facts or information which would satisfy an objective observer that the person concerned may have committed an offence [14]. Detention under Article 5(1)(c) – even for prevention – must still meet the threshold of "reasonable

suspicion" that a criminal offence has been or will be committed. The suspicion must be objective and based on verifiable facts, not mere intuition, assumptions, or personal opinions of the authorities.

In this study we would like to analyze the ECtHR decision O.P. vs. the Republic of Moldova (Application No.33418/17)[6]. In this case, the applicant, a former marketing employee at a private bank, was arrested in January 2017 on charges of abuse of office, later reclassified as fraud, in connection with a scheme involving false payment orders allegedly used by a law firm to initiate court proceedings on behalf of the bank without paying fees. The domestic courts repeatedly ordered her pre-trial detention, citing reasonable suspicion and flight risk, without providing detailed reasoning or ensuring access to the materials justifying her detention. The primary evidence included vague statements by a lawyer and a Skype message referencing the applicant's name, though the falsified payment orders were not proven to have been issued during her employment period. Her detention was prolonged multiple times until her conviction in January 2018. In 2020, the Prosecutor General launched revision proceedings, citing concerns of politically motivated convictions, and the applicant was released pending review. Proceedings remain ongoing.

The basic principles of the application of the Art.5 para.(1) let. c) of Convention. According to Court Decision, Article 5 of the Convention is, together with Articles 2, 3 and 4, in the first rank of the fundamental rights that protect the physical security of the individual, and as such its importance is paramount. Its key purpose is to prevent arbitrary or unjustified deprivations of liberty [6]. So, the Court places Article 5 alongside Articles 2 (Right to life), 3 (Prohibition of torture), and 4 (Prohibition of slavery) as part of the core set of non-derogable rights that are crucial for human dignity and physical security. The primary aim of Article 5 is to protect individuals from being deprived of their liberty arbitrarily, without legal justification or due process. The provision sets out exhaustive grounds on which a person can be lawfully detained (e.g., after conviction, for non-compliance with a court order, on reasonable suspicion of having committed an offence, etc.), and any detention outside of these grounds is illegal under the Convention.

This principle reflects a central value in democratic societies: that liberty is a fundamental human right, and that the state's power to detain individuals must be controlled. Arbitrary detention is a feature of authoritarian regimes, and Article 5 aims to prevent this abuse of power. By placing Article 5 in the same category as the rights to life, protection from torture, and freedom from slavery, the Court underscores that freedom from unjust imprisonment is vital not just for the individual, but for the functioning of the rule of law.

The Court highlighted the exhaustive nature of the exceptions, which must be interpreted strictly, and which do not allow for the broad range of justifications under other provisions (Articles 8 to 11 of the Convention in particular); the repeated emphasis on the lawfulness of the detention, both procedural and substantive, requiring scrupulous adherence to the rule of law; and the importance of the promptness or speediness of the requisite judicial controls [6]. Article 5 §1 sets out a limited and closed list of situations in which a person may lawfully be deprived of liberty (e.g., after conviction, pre-trial detention based on reasonable suspicion, to prevent spreading infectious disease, etc.). These exceptions are exhaustive, so no other grounds are permitted, and they must be interpreted narrowly. This is unlike Articles 8-11 ECHR, which protect rights that can be balanced against other legitimate interests (like national security or public order). Article

5 does not permit such balancing: either the detention is covered by one of the listed grounds or it is unlawful.

According to the standards of the ECtHR, detention must comply with both procedural legal standards, such as proper arrest warrant, timely judicial review and substantive legal standards, for example, genuine suspicion, proportionality. The respect of the principle of rule of law requires that any deprivation of liberty follows legal procedures and is justified in fact and in law. Even a small procedural irregularity may violate Article 5. This article demands speedy judicial oversight. Judicial control must occur promptly after arrest (Article 5 §3) and be available regularly and quickly during detention (Article 5 §4). Delays in reviewing the lawfulness of detention, or in holding hearings, undermine the protection against arbitrary detention.

Court explained that under the first limb of Article 5 § 1 (c) of the Convention, a person may be detained, in the context of criminal proceedings, only for the purpose of bringing him or her before the competent legal authority on reasonable suspicion of having committed an offence. The "reasonableness" of the suspicion on which an arrest must be based forms an essential part of the safeguard laid down in Article 5 § 1 (c). Having a reasonable suspicion presupposes the existence of facts or information which would satisfy an objective observer that the person concerned may have committed the offence. What may be regarded as reasonable will, however, depend on all the circumstances [6].

So, according to Court interpretation of Convention it is not enough that a person is merely suspected of wrongdoing. The specific purpose of the detention must be to bring him before a judge or judicial authority. There must be objective evidence or information justifying the suspicion. It is not a subjective belief of the police or prosecutor, but a standard assessed from the viewpoint of a neutral observer. What qualifies as "reasonable" can vary depending on the facts of the case (e.g., seriousness of the alleged crime, urgency, complexity of investigation, etc.). The Court accepts that authorities may not have full evidence at the point of arrest. But there must be enough to satisfy an impartial observer that the person may have committed a crime.

The court mentioned that Article 5 § 1 (c) of the Convention does not presuppose that the investigating authorities have obtained sufficient evidence to bring charges at the time of arrest. The purpose of questioning during detention under Article 5 § 1 (c) is to further the criminal investigation by confirming or dispelling the concrete suspicion grounding the arrest. Thus, facts which raise a suspicion need not be of the same level as those necessary to justify a conviction or even the bringing of a charge, which comes at the next stage of the process of criminal investigation [6]. So, the purpose of pre-charge detention is to allow the authorities to investigate further, by interrogating the suspect and gathering evidence. The threshold of suspicion required for arrest is lower than the level of proof needed for formally charging a person or securing a conviction in court. It is important to note that an arrest can be lawful even if the case is not yet fully developed as long as there is a concrete, reasonable suspicion.

This interpretation reflects the Court's balancing act between the State's interest in effective law enforcement, and the individual's right to liberty and protection from arbitrary detention. At the same time, this rule prevents states from abusing pre-trial detention as a form of punishment or intimidation and encourages transparency and urgency in criminal investigations. Court standards claim that pre-trial detention is exceptional, not routine measure. Importantly, continued detention must still meet higher standards

over time – reasonable suspicion at the point of arrest is not enough to justify keeping someone detained indefinitely.

The violations committed by the Moldovan authorities. In this case, the European Court of Human Rights found that the Moldovan authorities violated Article 5 § 1 of the Convention by detaining the applicant without a reasonable suspicion of her having committed an offence. The domestic courts justified her pre-trial detention primarily on two pieces of weak and misrepresented evidence: 1) A message exchange between a bank owner and a lawyer, which, contrary to the Government's claims, contained no mention of false stamps or tax evasion; and 2) The testimony of another lawyer, which failed to link the applicant to any criminal activity. Furthermore, an expert report confirmed that no falsified payment orders existed during the applicant's employment period. As a result, the Court concluded that the evidence presented could not have persuaded an objective observer that the applicant had committed a crime, rendering her year-long detention arbitrary and unlawful under Article 5 § 1 of the Convention.

The European Court of Human Rights found a violation of Article 5 § 4 of the Convention in the case concerning the applicant's pre-trial detention. This provision guarantees both the right to challenge the lawfulness of detention and to receive a speedy judicial decision. The Court emphasized that the domestic courts failed to indicate any concrete reasons for the applicant's detention, and the defense was initially denied access to the evidence submitted by the prosecutor. These deficiencies rendered the situation particularly urgent. Despite this, the 14-day delay in examining the applicant's habeas corpus request was deemed excessive and incompatible with the requirement of prompt judicial review. Therefore, the Court concluded that the applicant's procedural rights under Article 5 § 4 were violated.

Conclusions. The right to liberty is a fundamental right regulated and guaranteed by the ECHR. According to the Court jurisprudence, this right has an absolute nature and could be limited only in its exercise, being positioned in the ransom of absolute rights such as the right to life, prohibition of torture and freedom from slavery. The absolute nature of this right determines the fact that any deprivation of liberty must be narrowly interpreted and strictly justified under one of the exceptions listed in Article 5 § 1. Arrest and pre-trial detention, as exceptional measures, must comply with both procedural and substantive safeguards established by the European Court of Human Rights. The ECtHR has developed clear and binding standards concerning the lawfulness of detention, the requirement of a "reasonable suspicion" under Article 5 § 1 (c), and the obligation of prompt judicial control under Article 5 § 4. These standards aim to protect individuals from arbitrary or abusive deprivation of liberty.

The analysis of the case O.P. vs. Republic of Moldova reveals serious violations of the applicant's rights. The Moldovan authorities failed to demonstrate a reasonable suspicion justifying the arrest, relied on weak and misrepresented evidence, and did not ensure timely judicial review or full access to case materials. These failures led to breaches of both Article 5 § 1 and Article 5 § 4 of the Convention. The case underscores persistent structural problems in Moldova's criminal justice system, including poor evidence standards for detention, limited procedural transparency, and inadequate judicial scrutiny.

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FORENSIC ANALYSIS OF FRAUDULENT MESSAGES: TRANSLATION AS A TOOL IN COMBATING CROSS-BORDER CYBERCRIME

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Summary

Cybercrime has increased significantly recently, as a result of individual and group criminal practice, and now poses a threat to individuals, organizations, and democratic systems around the world. However, cybercrime poses two main challenges for legal systems: first, because cybercriminals operate online, cybercrime extends beyond the borders of specific jurisdictions, which constrains the functioning of the police and, subsequently, the conviction of perpetrators; second, since cybercriminals can operate from anywhere in the world, law enforcement agencies struggle to identify the origin of communications, especially when obfuscation strategies are used, e.g., dark web forums.

However, cybercriminals inherently use language to communicate, so linguistic analysis of suspicious communications is particularly useful in deterring cybercriminal practice. This article reports on the potential of forensic translation in the fight against cybercrime. Although the term 'forensic translation' is commonly understood as synonymous with 'legal translation', it is argued that the implications of forensic translation go beyond those of legal translation, to include analyses of language rights, the right to interpretation and translation in legal proceedings (in the EU) or even investigative and information practices. Translation is a ubiquitous activity that is carried out not only by professional translators but also by lay speakers of the language, often using machine translation systems. The latter's ease of use makes it particularly suitable for criminal cross-border communications (e.g. extortion or fraud) and cybercrime (e.g. cybertrespass, cyberfraud, hacking, cyberporn or online child pornography, cyberviolence or cyberstalking).

This article presents the results of the analysis of cybercriminal communications from the perspective of forensic translation. It demonstrates that translation is frequently used to spread cybercriminal communications and that reverse engineering the translation procedure will help law enforcement agencies narrow their number of suspects and, consequently, deter cybercriminal threats.

Keywords: forensic linguistics, cybercrime, language crimes, translation studies, translingual plagiarism.

Introduction. Cybercrime has increased significantly in the last few years, largely due to technological advances in recent decades [41]. The massification of mobile devices and the possibility of using these devices almost at any time and in any place, has allowed citizens to instantly post and publish the information they value most [37]. However, this broad access to and use of connected devices to change, publish, and post whatever they want, has also exposed users to several cyberattacks. From this technological possibility, new opportunities for cybercrime have emerged, which are being exploited by criminals. As increasingly sophisticated technologies are introduced, cybercriminals are dedicated to exploring three types of weaknesses: system, process, and user vulnerabilities.

It is not surprising that cybercrime remains a threat to individuals, organizations, and democratic systems around the world, and can be undertaken either by individuals, independently, or collectively, by organized and unorganized groups. Individual cybercriminal activities are usually undertaken by a single person, a hacker acting in own name

for personal purposes and for own reasons. Cybercriminal activities undertaken collectively usually target organisations, societies or individuals, based on their class characteristics. An example is ransomware which consists of installing a type of cryptovirological malware in the victim's system and threatening to publish the victim's personal data or permanently blocking access to the data or destroying it (in this case, through cryptoviral extortion) until an amount is paid.

Indeed, cybercrime is largely a form of transnational crime, as cybercriminals often operate from one country to prey on victims who may be located in different countries around the world. This makes it significantly more difficult to investigate by the police and deter these threats and activities, as well as to convict the perpetrators, because, on the one hand, the different levels of communication make it very difficult and complex to positively identify offenders, and, on the other hand, legal cooperation between jurisdictions at a transnational level, poses particular challenges for jurisdictions that are, in several cases very difficult to overcome. Second, because cybercriminals operate in the cyber world – a world without jurisdiction – they have the potential to operate geographically from any part of the world, which gives them a competitive advantage over law enforcement.

Linguistic analyses have tremendous potential to support the fight against cybercrime. This is based on the assumption that cybercriminals inherently use language to communicate, whether for extortion, fraud, ransomware, or other purposes. Therefore, linguistic analysis of suspicious communications is particularly useful in deterring the practice of cybercrime, as it has the potential not only to attribute the authorship of a disputed anonymous text to a specific author from a group of suspected authors, but also to establish the linguistic profile of the anonymous author, if there is no group of suspects. In this case, forensic linguistic analysis has the potential to establish the sociolinguistic characteristics of the perpetrator(s) of the criminal text in order to determine the type of person who wrote the text based on the language they use. The sociolinguistic profile includes determining whether the authors are native speakers of the language and, if not, determining their mother tongue. This methodology is essential in cybercrime cases because, as will be shown, a significant volume of cybercrime consists of cross-border criminal activities and is currently carried out transnationally.

Therefore, this article introduces the new concept of forensic translation and discusses its potential for investigating and deterring cybercrime. In the next section, a definition of cybercrime is presented, followed by a discussion of linguistic analysis in the context of cybercrime deterrence. The following section presents the arguments in favour of forensic translation. Next, three applications of forensic translation are presented: a case of translinguistic plagiarism detection and analysis, a case of sociolinguistic profiling and an example of forensic translation, sociolinguistic profiling and cybercrime.

Definition of cybercrime. Cybercrime can be briefly defined as a type of technology-facilitated (online) crime that has been treated over the years as traditional crime, except that it takes place online. In this sense, cybercrime has traditionally been considered to be part of the binomial of Virtual vs. Real Criminal Practices, and therefore as a type of cybercrime that mimics and adapts reality, despite the fact that it cannot be considered that it simply imitates the real. In contrast, activities that take place in the virtual world clearly have an impact on physical and geographical reality [16, 17]. A notable example of this impact is the case of the exchange of dangerous information and materials. Consider

a case where cybercriminals share information online about how to produce improvised explosive devices (IEDs). If someone uses this information to produce material a bomb and make it explode, then sharing illegal content online cannot be considered a simple online activity, as the impact of the explosion will demonstrate. This clarification is essential to address cybercriminal activities in all their complexity.

In the European Union, the Directorate-General for Migration and Home Affairs recognises that as many types of traditional crimes, including terrorism, trafficking in human beings, drug trafficking and child sexual abuse, have either moved or are facilitated online, most criminal investigations require a digital component. As a result, the European Union has developed laws and adopted actions aimed at improving the prevention and encouraging the investigation and prosecution of cybercrime, so far, with a focus on the sexual exploitation of children. To this end, the Union has adopted measures to promote the strengthening of law enforcement and judicial capacities and has encouraged collaboration with industry to empower and protect citizens.

In this context, the European Commission's Directorate-General for Migration and Home Affairs defines cybercrime as "criminal acts committed online through the use of electronic communications networks and information systems", and stresses that cybercrime is a problem without borders, which can be structured into three categories: (a) internet-specific crimes – this includes attacks against computer systems, as well as spoofing and phishing activities, e.g. providing fake banking websites to illegally obtain users' personal data, in particular usernames and passwords, and thus gain access to victims' bank accounts; (b) online fraud and forgery – this category of cybercrime consists of large-scale fraudulent activities, including, but not limited to, identity theft, phishing, spam and malicious code; (c) illegal online content – this category of cybercrime includes material on child sexual abuse, racial hate speech, incitement to terrorist acts, and hate speech, including glorification of violence, terrorism, racism, and xenophobia.

The behavior of cybercriminals of this type is largely encouraged by technology, since online interaction frequently gives users the impression that they are not interacting in the "real" world, but somewhere in a virtual space that allows them to "hide" behind a computer screen or smartphone and, accordingly, post, publish, comment, to offend, harass, intimidate, or procrastinate in a way that most would hesitate to do in cases of face-to-face communication. In addition, online interaction is no longer limited by language borders.

Whereas in the past, users could only communicate in a language they could speak or minimally understand, today's language technology, based on sophisticated machine translation engines, allows users to communicate with anyone, even other users who do not have the same language skills. This translation technology is not exclusively reserved for online applications, but can also be used in live, in-person contexts.

For example, anyone can use a smartphone app to record what their interlocutor says, transcribe their words, translate them into their own language, respond, translate the response back into the interlocutor's language, and reproduce the response so that the interlocutor can listen to them. However, this technology is easier to use in online scenarios, as platforms (e.g., social media) allow users to automatically translate the messages, posts, and publications of the users they interact with. The mere fact that this procedure is easier and less awkward than that required in face-to-face interaction encourages a higher degree of engagement and therefore interaction between users. Consequently,

language plays an essential role, not only in monolingual communication contexts, in the same language, but also in multilingual communication contexts. Thus, another level of complexity is added to cybercrime investigations, as technology moves from the status of a means of committing cybercrime activities to that of an active role in the production of cybercrime. This is a framework that law enforcement has overlooked, neglected and/or underestimated until now.

Linguistic analysis to deter cybercrime. Judicial linguistics, which consists of the application of linguistic analyses in judicial contexts, has been a central topic of research in the field of linguistics, especially in the last four decades and especially in English-speaking countries, although this field has reached maturity in several other countries. The term 'judicial linguistics' has been used in both a narrow and broad sense, although some linguists prefer to use the term in a narrow sense, while retaining the term 'language and law' to refer to judicial linguistics in a broad sense.

Therefore, in a broad sense, judicial linguistics usually subsumes three subfields: 1) the written language of the law; 2) the study of interaction in the legal process; 3) language as evidence [7; 22]. Alternatively, some authors divide the discipline into the following three subdomains: 1) the language of the law; 2) the language of the court; 3) the judicial language evidence [12].

The narrow definition of forensic linguistics limits the discipline to only the third subfield, language as evidence, i.e. to cases where linguistic analysis is used to support the investigative or evidentiary process. Thus, forensic linguistic analysis is used both to assist law enforcement agencies in their investigations and to provide evidence in the courts. However, forensic linguistic analyses are also common outside the courts and law enforcement agencies. A notable example of this is its potential to help universities determine if someone has plagiarized.

In the context of cybercrime, the sub-field that is most relevant is the third, language as evidence (i.e. judicial linguistics in the narrow sense). Linguistic evidence, in particular paternity analysis, sociolinguistic profiling and analysis of controversial meanings, will help law enforcement, both by providing useful information for the investigation and by providing evidence in the courts. By establishing the sociolinguistic profile of anonymous authors, linguists carry out an analysis of the language used in the respective texts in order to provide clues to the investigation as to the type of sociolinguistic person who wrote the text. Sociolinguistic profiling, which is different from psychological profiling, does not aim to determine the psychological state or characteristics of the authors of anonymous texts, but rather to identify features of the text that can be used as an indication of socio-demographic characteristics of the author, including age group, level of education, socio-economic status, gender/gender, geographical origin or whether the author is a native speaker of the language, and, if he is not a native speaker, his mother tongue. The sociolinguistic profile is particularly useful for the investigation process because it allows investigators to narrow down the group of suspects, in the absence of specific suspects, and to steer the investigation in the right direction.

Another application of forensic linguistics is the analysis of controversial meanings. It is known that criminals traditionally used a coded language to communicate, but over time, as the codes became easier to decipher, communication between criminals became more sophisticated, subtle and volatile. In addition, although speakers of a language are trained from a very young age to extract the meaning of words, in social contexts, cre-

ating meaning is much more complex, as is understanding meaning. First, words frequently have several different meanings, represented by different entries in dictionaries. Therefore, the meaning extracted from such words does not necessarily correspond to their predominant meaning. Secondly, in social interaction, it is common for meaning to be deduced only from context, which requires an assessment of the interlocutors, the context, the communication situation, as well as aspects such as context and social distance, among other elements. A linguistic analysis based on the principles of pragmatics is therefore essential in order to establish not only the communicative intentions of the interlocutors, but also the intended and/or apparent meaning of the disputed text. Forensic linguistic analysis of controversial meanings is highly relevant, for example, in cases of incitement to hatred, defamation, cyberbullying or incitement to hatred, violence or terrorism.

Overall, these three applications of forensic linguistics are essential for investigating and presenting evidence in cybercrime cases. However, given the changes in cybercrime in recent years, which have made it an increasingly transnational and cross-border problem, forensic linguistic analyses alone are likely to have a limited impact on the investigative and evidentiary process. Due to the use of translation methods and translation systems, traditional monolingual approaches to cybercrime texts are no longer sufficient. Instead, a forensic approach to translation is needed.

Sociolinguistic profile and cybercrime. The principles used to establish the sociolinguistic profile of perpetrators can also be applied to the investigation of cross-border cybercrime practices. Figures 3 and 5 (written in English) and 4 and 6 (written in Portuguese) illustrate an example of fraudulent and misleading messages sent to citizens for the purpose of extortion.

In the two messages, the recipient is informed that a parcel could not be delivered to him because the delivery address is missing or incomplete. The recipient is then invited to take action by providing the necessary details for the successful delivery of the package. Information is also provided on how the recipient can track the package. This, together with the fact that the information on the local parcel service is localized (i.e. adapted to the recipient's locality), increases the credibility of the message in the eyes of the inattentive recipient.

Subject: We attempted to deliver your package

Dear valued Customer,

We require additional input and information from you to successfully deliver parcel 15504880058988.
The delivery address provided for this parcel is incomplete, and we require further details to make a delivery.
As we have been unable to determine the full address for this package, the parcel has remained in our depot. From here, you can take several different options:

>> Update and complete the delivery address provided
Then arrange delivery of the parcel to an alternative address.

Pick up the parcel from our address Unit 9, Rosemount Business Park.

You can also track the progress of your parcel through this link.
If you cannot provide a response to this action within seven days, the parcel will be returned.
Should you require this parcel to be delivered again to your address or a different address, additional charges will apply.

Fig. 3 Fraudulent message

Caro Consignatário,

Para procedermos à entrega da encomenda número RD463746354PT, precisamos da sua intervenção.
O endereço de entrega fornecido para esta encomenda está incorreto ou não existe, uma vez que os nossos estafetas não conseguiram chegar a este local.

Uma vez que esta tentativa de entrega não foi bem-sucedida, a sua encomenda foi devolvida ao nosso armazém.
A partir de agora, pode escolher várias opções diferentes:

>> Atualizar o endereço de entrega fornecido
>> Agendar a entrega da encomenda num endereço alternativo

Pode também acompanhar o progresso da sua encomenda através deste link.
Se não conseguir responder num prazo de dois dias, esta encomenda será devolvida ao remetente original.
Dependendo do tipo de encomenda, o remetente poderá ter de pagar taxas de devolução.

Poderá, também, recolher a encomenda no nosso armazém em Merc. For Do Tijolo Lj 16 A 18, 1170-221.
A nova entrega desta encomenda está sujeita ao pagamento das taxas que se encontram detalhadas nos links supra indicados.

Com os melhores cumprimentos,
CTT
www.ctt.pt
Esta mensagem é enviada automaticamente, por favor não responda.
Em caso de dúvidas ou informações adicionais, aceda a www.ctt.pt/ajuda

Fig. 4 Fraudulent message (in Portuguese)

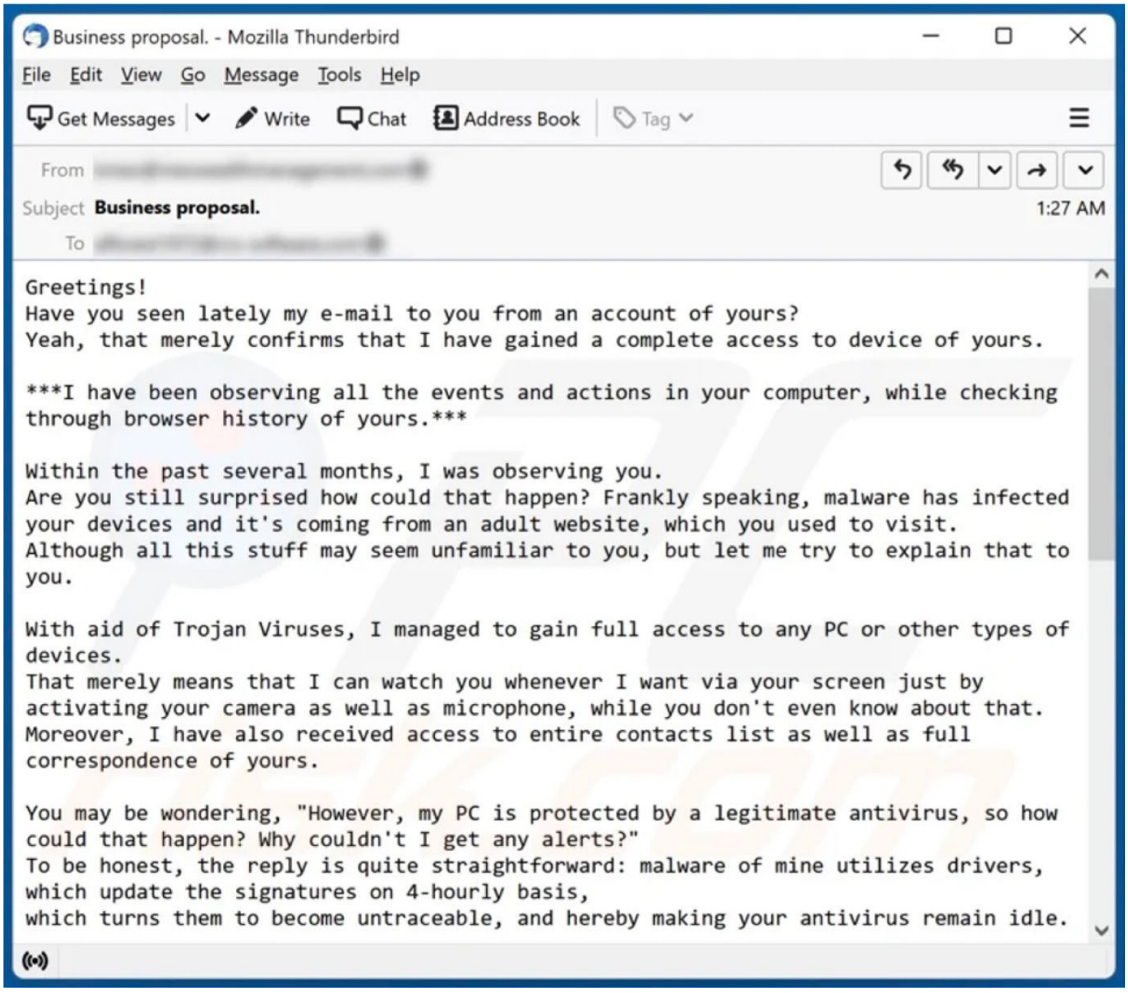
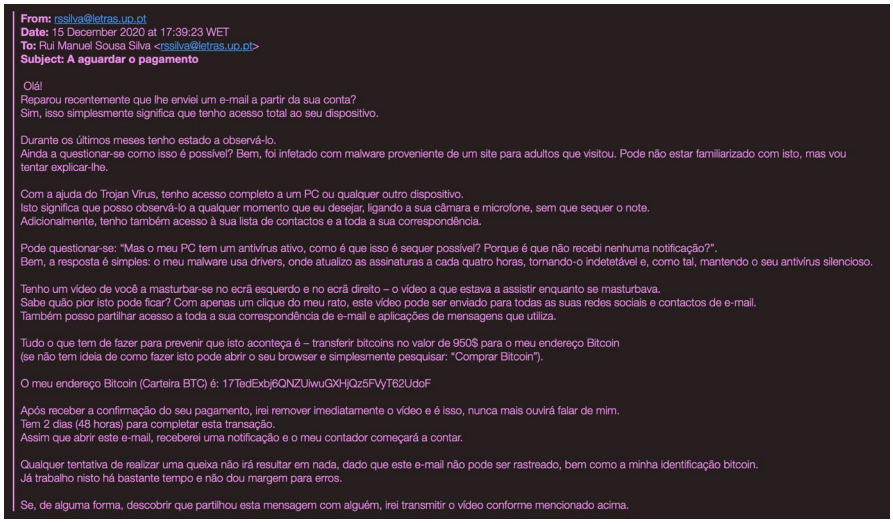


Fig. 5 Ransomware message


From: rssilva@letras.up.pt
Date: 15 December 2020 at 17:39:23 WET
To: Rui Manuel Sousa Silva <rssilva@letras.up.pt>
Subject: A aguardar o pagamento

Olá!
Reparou recentemente que lhe enviei um e-mail a partir da sua conta?
Sim, isso simplesmente significa que tenho acesso total ao seu dispositivo.

Durante os últimos meses tenho estado a observá-lo.
Ainda a questionar-se como isso é possível? Bem, foi infetado com malware proveniente de um site para adultos que visitou. Pode não estar familiarizado com isto, mas vou tentar explicar-lhe.

Com a ajuda do Trojan Vírus, tenho acesso completo a um PC ou qualquer outro dispositivo.
Isto significa que posso observá-lo a qualquer momento que eu desejar, ligando a sua câmara e microfone, sem que sequer o note.
Adicionalmente, tenho também acesso à sua lista de contactos e a toda a sua correspondência.

Pode questionar-se: "Mas o meu PC tem um antivírus ativo, como é que isso é sequer possível? Porque é que não recebi nenhuma notificação?".
Bem, a resposta é simples: o meu malware usa drivers, onde atualizo as assinaturas a cada quatro horas, tornando-o indetetável e, como tal, mantendo o seu antivírus silencioso.

Tenho um vídeo de você a masturbar-se no ecrã esquerdo e no ecrã direito – o vídeo a que estava a assistir enquanto se masturbava.
Sabe quão pior isto pode ficar? Com apenas um clique do meu rato, este vídeo pode ser enviado para todas as suas redes sociais e contactos de e-mail.
Também posso partilhar acesso a toda a sua correspondência de e-mail e aplicações de mensagens que utiliza.

Tudo o que tem de fazer para prevenir que isto aconteça é – transferir bitcoins no valor de 950$ para o meu endereço Bitcoin
(se não tem ideia de como fazer isto pode abrir o seu browser e simplesmente pesquisar: "Comprar Bitcoin").

O meu endereço Bitcoin (Carteira BTC) é: 17TedExbj6QNZUiwuGXHjQz5FVyT62UdoF

Após receber a confirmação do seu pagamento, irei remover imediatamente o vídeo e é isso, nunca mais ouvirá falar de mim.
Tem 2 dias (48 horas) para completar esta transação.
Assim que abrir este e-mail, receberei uma notificação e o meu contador começará a contar.

Qualquer tentativa de realizar uma queixa não irá resultar em nada, dado que este e-mail não pode ser rastreado, bem como a minha identificação bitcoin.
Já trabalho nisto há bastante tempo e não dou margem para erros.

Se, de alguma forma, descobrir que partilhou esta mensagem com alguém, irei transmitir o vídeo conforme mencionado acima.

Fig. 6 Ransomware message (in Portuguese)

A close examination of the two messages shows that, except for the language used (English in Figure 3 and Portuguese in Figure 4), they are very identical in structure and content. In addition, linguistic wording, while not perfect, is fully functional, unlike the overly simplistic and grammatically incorrect basic language used in misleading messages that were prevalent in the past. Therefore, as the quality of the language currently used in misleading messages has improved, compared to those disseminated in the past, recipients can no longer rely on the low quality of the language as indices of deception. Consequently, the deceptive potential of these messages is currently comparatively higher.

Similarly, Figures 5 and 6, which come from a case of attempted ransomware, are used to inform the recipient that they have been videotaped while watching pornography on their computer screen and warn them that if they do not transfer a significant amount to a bitcoin account, the video will be broadcast publicly. The message includes important information on consistency, which could indicate its misleading nature: 1) implies that the recipient has two screens, which, of course, is not always the case; 2) asserts that the recipient has watched porn, information the veracity of which the victim will know better than anyone else. Obviously, these are aspects that the recipient may overlook, not least because they may believe that criminals could edit real videos with the intention of falsely accusing them. Linguistically, the two messages show identical structural patterns and only minor linguistic problems (most likely resulting from machine translation errors), which are very likely to go unnoticed by most recipients.

The two cases illustrated in messages 3 and 4 and 5 and 6 suggest that cybercrimes such as extortion and ransomware are "language crimes" [32] because they are committed, to a significant extent, through the use of language – they are largely dependent on machine translation. The generalization of machine translation engines allows any cybercriminal operating from anywhere in the world to act transnationally and therefore imposes crimes on victims who may be geographically removed or even located in another jurisdiction. More importantly, the sophistication of these engines allows cybercriminals to spread their crimes, even when they don't speak the victims' native language.

In this context, forensic translation approaches are doubly useful: on the one hand, identifying patterns used in cybercrime communications will allow national and interna-

tional authorities to inform citizens about how to protect themselves from these cybercrime attacks (companies around the world have tried to inform their customers about these cybercrime attacks, but the fact that they present mostly illustrative examples, in addition to the fact that the form of the messages changes with technological developments, reduces the effectiveness of the campaigns); On the other hand, the details obtained from the forensic analysis of the translations not only allow states to adopt systems to combat cybercrime, but also help law enforcement agencies to establish the sociolinguistic profile of criminals, in particular the origin of attacks, and ultimately contribute to bringing them to justice.

The field of forensic translation is a promising field of research, despite the fact that it has two main challenges arising from technological developments: machine translation (MT) and generative artificial intelligence (AI). As machine translation systems evolve, the quality of translation improves, and even though this quality may in many cases be lower than the quality of human-made translation, it is likely that machine translation systems will increasingly and successfully be used for deceptive purposes. The same is true for AI-generated text: although AI-generated text appears to be good at first glance, a closer look shows that it has linguistic imperfections, as demonstrated by previous empirical observations. Therefore, despite the likelihood that such defects will be overlooked by lay users of the language, they do not currently go unnoticed by trained linguists.

However, it is likely that the formation of new large language models will allow artificial intelligence to mimic human-produced text more competently, which in turn will make it more difficult to distinguish between AI-generated and human-generated text. In addition, preformed generative transformation (GPT) systems are increasingly integrated into TM systems, thus adding another layer of complexity to forensic linguistic and translational analysis. Given the nature of today's language technology, any prediction is largely speculative. However, if we consider the very nature and complexity of human language, including the biological characteristics involved in language production, such as homeostasis, in principle, linguistic analysis will remain essential in establishing the difference between AI-generated and human-generated text. However, research in the field of forensic translation will need to be continued to stay one step ahead – rather than keeping up with the rapid evolution of language technology. This is especially true in cybercrime scenarios.

Conclusions. The term "court translation" has been used rarely. However, on occasions when it has been used, the term has been used as a synonym for "legal translation". Although the two terms have in common the fact that they can be used in and by the courts (forum, in the traditional sense), in this article we have argued the need to make a clear distinction between the two. While legal translation is limited to the translation of texts relating to legal issues and courts, judicial translation should be used more broadly to include all applications where translation theories, methods and techniques can help courts, law enforcement agencies and organisations in general to apply legal practices and standards, ethics and morals. Thus, judicial translation can be defined as the interdisciplinary branch of judicial linguistics that applies knowledge and expertise in the field of translation in judicial contexts. In support of this claim, three illustrative examples were presented that demonstrate the relevance of forensic translation: 1) detection and analysis of translinguistic plagiarism; 2) sociolinguistic profiling; and 3) detecting and deterring cybercrime.

Data analysis and subsequent discussion show that machine translation is increas-

ingly used and widespread, both by the general population and by cybercriminals. Therefore, as technological developments allow for high-quality translation systems, cybercriminals' communications are likely to become more sophisticated, and it will therefore become relatively more difficult to distinguish between deceptive and genuine communications. In this context, it has been argued that further developments in the field of forensic translation analyses will enable legal, law enforcement and official institutions to develop appropriate methods and systems to ensure the safety and security of citizens and, ultimately, to strengthen democratic systems, fully respecting subjectivities, and freedom of choice.

The relevance of the field of forensic translation will increase in the future. With the technological advancements of artificial intelligence (AI) systems, cybercriminals will be able to multiply their attacks, doing so at a higher speed, by automatically generating text at a speed that is impossible from a human point of view. Therefore, generative artificial intelligence systems, which are trained on large language models (LLMs) built primarily for English, in combination with increasingly powerful and sophisticated machine translation systems, will provide criminals with unprecedented opportunities for cybercrime practice within jurisdictions, across the border.

In this context, forensic translation approaches will have the potential to combine the ability to distinguish human-produced text from machine-produced text, while creating the sociolinguistic profile of the text producer. Research is already underway in this direction.

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SOME ASPECTS REGARDING THE CRIMINAL PROSECUTION SITUATIONS IN MONEY LAUNDERING CASES: THE SITUATION OF THE REPUBLIC OF MOLDOVA

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Summary

The article explores the role of typical investigative situations in money laundering cases, with a specific focus on their applicability in the Republic of Moldova. The study begins by analyzing doctrinal approaches to the definition and structure of investigative scenarios and highlights the necessity of aligning these models with evolving criminal realities and international regulatory standards. Various typologies encountered during the initial phase of criminal investigations are examined, classified according to evidentiary features, concealment methods, and the complexity of illicit operations.

The article proposes a classification tailored to Moldova's context, including mechanisms such as the use of cryptocurrencies, falsified financial records, and offshore networks. Emphasis is placed on adapting investigative strategies to recurrent scenarios in order to enhance procedural effectiveness. The conclusions underscore the need for a dynamic, interdisciplinary approach to support law enforcement in the identification, documentation, and prosecution of this category of financial-economic crime.

Keywords: typical investigative situations, money laundering, forensic methodology, reasonable suspicion, financial investigation

Introduction. In the context of intensified financial crime and the globalization of illicit capital flows, the investigation of money laundering offenses calls for a reevaluation of forensic methodology. Investigative situations – especially those characteristic of the initial phase – are becoming essential tools in shaping operational strategies and guiding judicial decisions. Specialized literature provides a wide range of perspectives on the nature, structure, and classification of such situations, highlighting the need for their adaptation to new financial concealment techniques and to the requirements of international regulatory frameworks.

This article operates on the hypothesis that, within the conditions specific to the Republic of Moldova, defining and applying recurrent investigative typologies can significantly improve the efficiency of documenting money laundering cases. By correlating

doctrinal theories with recent judicial practice and with the requirements of legislative harmonization, the research aims to offer a coherent analytical framework applicable at both strategic and tactical levels.

The adopted methodology combines a comparative analysis of doctrinal sources, national jurisprudence, and European legal instruments, alongside critical observations on investigative practice. The study is structured around several core themes: the conceptual delimitation of investigative situations, a presentation of relevant classifications in the context of money laundering investigations, and the proposal of operational models adapted to the national context. The conclusions aim to highlight the necessity of developing a flexible methodological framework and of strengthening inter-institutional cooperation in combating this complex criminal phenomenon.

Methods and materials applied. This research is based on a doctrinal-theoretical analysis, correlated with the examination of judicial practice in the Republic of Moldova and relevant national and European legislation. Comparative, systemic, and interpretive methods were employed to highlight investigative typologies applicable to money laundering offenses. The materials analyzed include doctrinal studies, court rulings, documents issued by competent authorities, and data drawn from investigative practice. The focus was placed on identifying typical initial situations and their relevance in enhancing the efficiency of the criminal investigation.

Research objective. The main objective of this study is to identify, analyze, and classify typical investigative situations in money laundering cases, with the aim of developing a methodological framework applicable in the practice of law enforcement bodies in the Republic of Moldova. The research seeks to contribute to the development of a coherent tactical and operational approach adapted to the specific characteristics of this complex type of crime.

Discussions and results obtained. Over time, investigative situations have attracted the interest of numerous scholars; however, to date, there is no universally accepted concept regarding their definition, structure, and significance. The diversity of opinions in this area reflects the complex and constantly evolving nature of criminal proceedings.

According to the theorist A.N. Colesnicenco, "an investigative situation may be defined as a distinct stage of the investigation within the examination of criminal acts, marked by the presence of concrete evidence and information, as well as by specific tasks related to the acquisition and verification of probative material" [29, p.16].

According to Professor M. Gheorghiță, "an investigative situation must be understood as the factual context – the actual circumstances in which the criminal investigation body operates at a specific point during the inquiry. These circumstances determine a particular mode and sequence of action required to successfully fulfill the assigned tasks" [2, p.312].

Rightly so, authors Dinu Ostavciuc and Lilia Popa note that "for each type of offense, typical investigative situations can be identified from the initial stage of the investigation. These situations are determined by the manner in which the offense is committed, the methods used to conceal it, as well as the nature and amount of information available to the criminal investigation body at the early stage of the inquiry" [32, p.37]. The same authors also emphasize that "the emergence of typical investigative situations can be explained by the fact that, although each offense has an individual character, offenses within the same category often share common features. These recurring characteristics,

specific to a particular type or group of offenses, provide criminal investigation bodies with a reference framework. This framework can be utilized in situations where specific information about the offense in question is lacking, thus allowing authorities to apply standardized and effective investigative methods based on these recurring typologies. Since typical investigative situations are shaped by the analysis of practices carried out by investigative authorities in relation to certain groups or categories of crimes, it is to be expected that these situations carry a subjective element. This subjectivity stems from the way criminal investigation bodies perceive and correctly interpret the information received during the investigation. Such perception is influenced not only by the professional knowledge and competencies of investigators but also by their psychological and intellectual traits, which play an important role in assessing and managing the case. At the same time, the objective aspect in formulating typical investigative situations cannot be excluded. As they are common to a particular group or category of offenses, their formulation is based on certain objective circumstances (...)" [32, p.37].

M. Gropa stated that "(...) the criminal investigation plan must be adaptable to the changing situations encountered during the case inquiry" [3, p.22]. In other words, the author considers that investigative situations – or those related to the case inquiry – may undergo changes. We do not agree with this position, as we believe that such developments pertain not to the investigative situations themselves, but to the circumstances discovered at a given moment during the course of the criminal investigation. These circumstances influence the planning and organization of the investigation, demonstrating the dynamic nature of this process. Therefore, once new circumstances are established, the investigative body must adjust and modify the sequence of procedural actions and special investigative measures, particularly during the initial stage of investigating a specific offense.

"The process of investigating any criminal act is determined by the content and volume of initial information, on the basis of which the criminal investigation is initiated and the circumstances to be proven are established, taking into account the specific investigative situations identified. (...) The initial investigative situations, which arise during the primary phase of the investigation, are also typical. These two terms do not contradict each other; on the contrary, they complement this group-based classification – typical and initial situations. (...) It is precisely the dynamic nature of these situations and the specifics of their evolution that define the particularities of fulfilling the core tasks and functions of law enforcement bodies, especially in the preliminary stage of investigating crimes" [1, p.59].

"The accurate determination of the investigative situation constitutes an important practical exercise carried out by the criminal investigation officer, which allows for: selecting the appropriate direction of the investigation, formulating plausible versions, organizing and effectively ensuring cooperation between the criminal investigation body and the investigative or fact-finding authority, conducting procedural actions in an optimal sequence, and adopting timely and well-grounded decisions" [35, p.477].

"The organization and planning of the investigation as a whole, as well as the tactics of conducting specific investigative actions—particularly the selection of the most effective tactical methods – depend to a great extent on the investigative situation that develops prior to the formal initiation of criminal proceedings. The structure of the initial stage of the investigation covers the period from the moment the complaint regarding the

commission of the offense is received and preliminarily verified, up to the execution of the entire range of initial procedural actions and special investigative measures" [4, p.83].

Investigative situations hold a distinct trajectory and position within forensic doctrine, and the theory of such situations has become a fundamental doctrinal element in modern criminalistics. This theory emphasizes the possibility of developing effective investigation programs tailored to the specific conditions of a given investigative situation. Consequently, as the product of an independent theoretical framework, this forensic category – initially of a theoretical-methodological nature – has gradually acquired the status of a structural component within the forensic methodology applied to the investigation of certain categories of offenses [36, p.21-26]. It should be recalled that most researchers understand an investigative situation as a dynamically determined objective reality in which the investigation unfolds, shaped through the interaction of a specific set of factors and components.

Researchers Iu.V. Craciun [31, p.122] and D.B. Jambalov [5, p.9] define the typical initial investigative situation as "a recurring set of information about a committed offense, contained in the primary materials, which determines the system and sequence of solving the investigative tasks".

This interpretation is accurate, and we consider that the initial investigative situation does not emerge with the formal initiation of the criminal investigation, but rather during the preliminary verification of the crime report. This is particularly important in money laundering cases, where the information from submitted complaints, the findings contained in reports drawn up by competent institutions, materials provided by the Service for the Prevention and Combating of Money Laundering, as well as documents forwarded by other entities that have conducted verifications, must be thoroughly analyzed.

This verification is a legal requirement imposed by Article 274(1) of the Criminal Procedure Code, which provides that criminal prosecution may be initiated only if there is reasonable suspicion and if no circumstances excluding criminal liability are present. In other words, establishing reasonable suspicion is mandatory prior to the formal initiation of criminal proceedings, and the verification of the crime report plays a crucial role in this regard.

Moreover, in situations where the elements of the offense are directly identified by the criminal investigation body, the argument for mandatory prior verification becomes even more compelling. In such cases, the investigative authority is already managing a criminal case concerning the predicate offense, and in order to establish reasonable suspicion of money laundering, it has analyzed, verified, and administered relevant evidence within the underlying case. This approach reflects the logical and procedural nature of the investigation process, confirming that the initial investigative situation is formed during the verification phase of the complaint, rather than at the formal commencement of criminal prosecution.

Researchers specializing in the methodology of investigating money laundering have proposed various approaches regarding the identification and classification of typical initial investigative situations encountered in criminal cases of this nature. The differences stem from the primary criteria used to structure these situations, with each perspective reflecting the specifics of evidentiary elements, the characteristics of suspicious transactions, and the concealment mechanisms employed by offenders.

Thus, some classifications emphasize how the offense is discovered—for example, through reports from financial institutions, analyses by financial intelligence units, or in-

vestigations initiated within already existing criminal proceedings. Other approaches focus on the techniques used to integrate illicit funds into the legal economy, distinguishing between methods such as the use of offshore companies, layered international transactions, luxury asset purchases, or the conversion of funds through cryptocurrencies.

Additionally, another classification criterion may be the complexity of the criminal scheme, differentiating between individual money laundering operations and organized criminal networks operating at the transnational level. This diversity in defining typical initial investigative situations highlights the need for a flexible and adaptable methodological approach that considers both the evolving patterns of financial crime and the prevention and investigative mechanisms available at national and international levels.

In this context, researcher M.V. Saltevski outlines the following situations that may arise at the outset of criminal prosecution: "The first situation: there is information regarding acts and indicators of laundering; the offender is known (caught in the act; an audit or inspection revealed the existence of illicit profits – financial means or assets), but the direct executor and the laundering method are unknown. The second situation: illegal money laundering operations are identified within a specific structure (for example, a corruption or bribery case is under investigation), but the source of the 'dirty money' and its owner – the offender – are unknown. The third situation: there is information about laundering acts committed, and the corrupt offender is known, but other individuals involved in the laundering method are unknown" [33, p.11].

E.V. Selianina considers that a typical investigative situation at the initial stage of a money laundering investigation is characterized by the following features: "t here is justified information indicating money laundering; the individuals committing this offense are identified; the location of the financial means (or other assets) is known (or unknown)" [34, p.25].

A.V. Koliada identifies the following types of investigative situations specific to the initial stage of the investigation: "it has been established that a crime was committed, resulting in the acquisition of significant amounts of money; during a non-criminal audit, tax authority employees discover that the revenues of a legal entity clearly exceed what it could have earned based on its economic indicators; signs of the offense are identified only after all stages of money laundering have been completed; a person is identified whose income clearly exceeds what could be obtained through official earnings; within operational activities, all elements confirming both the commission of the money laundering offense and the involvement of certain individuals have been established" [30].

D.B. Jambalov presents his own list of typical initial investigative situations: "money laundering acts are discovered in the course of investigating the predicate offense; the acts of legalizing illicit proceeds are mentioned in a notification from financial monitoring authorities regarding suspicious financial transactions or operations; money laundering activities are uncovered as a result of operational activities carried out by law enforcement agencies" [5, p.8].

Continuing the analysis of typical initial criminal investigation situations in cases of money laundering offenses, it is relevant to note that, prior to the opinions of the aforementioned authors, Zlochenko Yakov proposed a list of typical situations that serves as an important reference point in the development of the investigative methodology for this category of crimes. These situations offer a structured approach to the conduct of criminal investigations and establish key tactical directions in uncovering the legalization of illicit funds.

Thus, "the first typical situation involves the initiation of the preliminary investigation by proving the facts of the legalization (laundering) of criminal proceeds, even if operational data already exists regarding the acquisition of illicit income by certain individuals. This approach is applied when there is sufficient information about the money laundering activities, and the focus of the investigation is on documenting and substantiating these actions, regardless of the timing of the predicate offense.

The second typical situation refers to a preliminary investigation that begins by proving the episodes of obtaining illicit income, even when there are operative insights indicating possible acts of legalization either by the beneficiaries of the illegal funds or by third parties. This strategy is applied when the priority of the investigation lies in identifying the unlawful source of the funds, with the subsequent investigation focusing on their laundering.

The third typical situation entails a simultaneous investigative process along two tactical directions. The first direction involves an investigation that moves from the predicate offenses to the laundering activities, while the second direction seeks to identify the acts of legalization and correlate them with the predicate offenses. This approach allows for a broad and concurrent investigation, facilitating the establishment of links between the predicate crimes and the laundering actions.

The sixth and seventh typical situations, applied in the initial stage of the investigation, represent a methodological continuation of the first two situations, but each is structured in two distinct sub-stages. In the sixth situation, the first sub-stage focuses the investigation on the laundering actions in order to prove the predicate offenses, while the second sub-stage shifts the focus to identifying new cases of laundering criminal proceeds. Methodologically, this situation combines procedural and operational actions specific to the first two typical situations, incorporating established investigative methods for tracking suspicious financial flows.

In the seventh situation, the direction of the investigation is reversed. In the first sub-stage, the investigation moves from the predicate crimes toward the laundering activities, while in the second sub-stage, it aims to identify new acts associated with the predicate offenses. This methodology ensures a logical connection between the initial criminal activity and the mechanisms used to legalize proceeds, contributing to the identification of the entire criminal structure" [37, p.109-126].

Iurie Craciun [31, p.123] proposes the following typical initial criminal investigation situations: "indications of money laundering are established in the course of investigating the predicate offense; indicators of money laundering are identified simultaneously with signs of the predicate offense; signs of money laundering are established through the analysis of information obtained from operational activities conducted by specialized units within the limits of their competences; indicators of money laundering are identified through the verification and analysis of data provided by state authorities vested with registration, authorization, control, or supervisory powers". In continuing the analysis of typical initial investigative situations, the aforementioned author further develops and elaborates each of these situations, providing a more precise methodological framework for conducting investigations.

We fully support these typical investigative situations, as the analysis of criminal cases in which the prosecution was initiated for money laundering confirms the same typology of investigative scenarios. However, considering the human factor and the evo-

lution of the regulatory and institutional framework in the Republic of Moldova, we consider it necessary to adapt these models to national realities and to the practical needs of law enforcement professionals.

In recent years, the Republic of Moldova has undergone a broad reform process and alignment with international standards in the field of anti-money laundering (AML). The Financial Intelligence Unit (FIU) of Moldova has recently become a member of the FATF, a development that imposes higher standards of supervision and international cooperation. Furthermore, the country has ratified European Union directives and adopted multiple legislative acts aimed at strengthening AML measures, thereby providing a clearer and more effective framework for law enforcement in this field.

Another essential element is Moldova's specific context, which has been marked by serious issues involving banking fraud and money laundering operations. Cases such as the massive embezzlements from the national banking system and the use of Moldova as a conduit for suspicious international transactions have revealed vulnerabilities in the financial infrastructure and emphasized the need for more robust investigative mechanisms.

In this regard, we consider it appropriate to develop typical investigative situations with broader applicability in practice, especially for young professionals and those confronting the complexity of the money laundering phenomenon. Such an approach would enable a clearer understanding of the mechanisms through which these crimes are committed, with an emphasis on specific methods of fund concealment, the networks involved, and the ways in which they can be identified and documented. It is essential that these typical situations are not only theoretically grounded but also adapted to operational realities so that investigators can employ effective methods for evidence collection, financial flow analysis, and inter-institutional cooperation.

Moreover, such a reformulation would contribute to better training of criminal investigators in the field of financial and economic crime, enabling them to gain a deeper understanding of the links between money laundering and predicate offenses, to anticipate criminal strategies, and to respond effectively to new methods of concealing illicit funds.

In this context, we propose the following typical criminal investigation situations specific to the Republic of Moldova, developed on the basis of judicial practice [6-28]:

Use of cyber fraud mechanisms and digital technologies in the processes of generating, transferring, and concealing illicit funds. This typical situation reflects the use of information systems and digital technologies to generate illicit revenues, followed by the concealment of their origin through a chain of transactions intended to give them a semblance of legality. The evolution of digital platforms, cryptocurrencies, and online payment systems has facilitated the development of sophisticated fraud mechanisms, allowing offenders to bypass regulatory surveillance and transfer illicit funds through channels that are difficult to monitor.

Use of falsified accounting and tax documents to conceal illicit income. This typical situation involves the use of document falsification and manipulation techniques to disguise the unlawful origin of funds. The fraudulent alteration of financial records enables offenders to lend an appearance of legality to illegally obtained sums, thereby avoiding detection by competent authorities. This method entails various forms of accounting and tax fraud, contributing to the concealment of suspicious financial flows and the evasion of legal responsibility.

Money laundering through international networks and offshore companies. The transfer of illicit funds across multiple jurisdictions constitutes a complex method of concealing their origin, aimed at fragmenting the financial trail and preventing the identification of ultimate beneficiaries. Exploiting regulatory and supervisory gaps in certain jurisdictions facilitates such operations by shielding them from monitoring by competent authorities.

Use of cash in the money laundering process to avoid electronic traceability. Laundering illicit funds through cash conversion represents a method intended to eliminate the electronic traceability of financial transactions and to hinder the rapid identification of their origin. This strategy is favored due to the difficulty of monitoring cash flows and the ease of subsequently integrating such funds into the formal economy. By fragmenting withdrawals and moving funds outside the banking system, the ability of authorities to track their path is significantly reduced, thereby ensuring the concealment of the illicit origin of revenues.

Conclusions. The analysis of money laundering offenses highlights the need to establish recurring typologies to guide the actions of law enforcement authorities. These investigative patterns enable the prompt identification of key elements such as the structure of criminal networks, methods of fund concealment, and techniques used to evade detection. A standardized approach based on the classification of typical criminal investigation situations ensures the efficiency of investigations by allowing for the application of methods tailored to each identified scenario. Without such a framework, investigating each case individually would delay evidentiary proceedings and limit the authorities' capacity to uncover complex money laundering schemes.

The complexity of money laundering offenses requires the use of investigative methods that combine traditional criminal investigation techniques with advanced financial and digital analysis tools. The structured nature of typical criminal investigation situations allows for the integration of methods such as financial flow analysis, electronic monitoring, and document forensics to identify illicit transfers and the entities involved in the concealment of funds. Moreover, the use of advanced technologies such as artificial intelligence and algorithmic analysis of suspicious transactions may aid in detecting highly sophisticated criminal schemes.

Typical criminal investigation situations in money laundering cases are characterized by a high degree of variability, stemming from the diverse methods employed by offenders to hide the origin of funds. The rapid evolution of criminal mechanisms necessitates the continuous updating of investigative strategies, so that authorities can effectively respond to new challenges. Flexibility in adapting investigative methods to current economic and technological realities is essential for prosecutorial effectiveness, allowing for swift responses to changes in the financial and legal domains. In this regard, the development of a dynamic analytical framework based on the continuous updating of criminal typologies contributes to optimizing the process of identifying and investigating money laundering offenses.

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CRIMINAL PROSECUTION SITUATIONS AND MAIN DIRECTIONS OF THE INITIAL STAGE OF INVESTIGATION OF THE WAR CRIMES

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Summary

In the current conditions, international and internal armed conflicts are becoming more widespread. Crimes committed during armed conflicts horrify by their scale and cruelty. They are unlikely to leave anyone unconcerned. Not only war crimes cause huge suffering to the mostly civilian victims, but they also have a devastating impact on the entire society, undermining the fundamental values of human rights and international order. The new extreme circumstances have forced law enforcement authorities to actively seek new organizational and legal forms of activity, since due to a number of objective and subjective factors, the usual organization of the work of law enforcement agencies, the system and order of investigating war crimes are outdated and unacceptable at the present time.

Besides, the scientific and legal literature currently lacks a fundamental theoretical concept with respect to the organization of the work of law enforcement agencies in war conditions and in what concerns the peculiarities of investigating war crimes. However, we also note a sharp lack of scientific research in this area, which prompted the development of this article, dedicated to criminal prosecution situations and main directions of the initial stage of investigation of the war crimes.

Keywords: war crime, criminal prosecution situation, criminal prosecution body, special investigative activity, evidentiary items, circumstances of the criminal case, tactics, methodology.

Introduction. During the investigation of crimes, various circumstances appear having diverse and complicated nature, substituting, complementing each other, thus their analysis and assessment allow for making optimal tactical, procedural and organizational decisions, selecting the appropriate means, procedures and methods for investigating and establishing the truth in the case. M. Gheorghita claims "The state of affairs that is created at a certain moment of the investigation of a specific case is called in forensics a *criminal prosecution situation*" [3, p.310].

The diversity of opinions of criminologists on the concept of 'criminal prosecution situation' can be divided into two groups. A group of researchers considers the criminal prosecution situation as an informational model for the investigation of a specific criminal case; another group characterizes it as an 'entirety of information significant for the criminal prosecution', as 'an entirety of circumstances in which the criminal prosecution is carried out' or as 'forensic information obtained in the process of investigating criminal cases' [8, pp.91-92; 11, p.52].

In the opinion of M. Gheorghita, by "the criminal prosecution situation must be understood the state of affairs i.e. the real circumstances in which the criminal prosecution body acts at a certain moment of the investigation, the circumstances that determine a

certain order and mode of action with a view to successfully accomplish the tasks set" [3, p.312].

The author S.N. Churilov consistently and in a well-argued manner develops the idea that the criminal prosecution situation represents "the totality of conditions and circumstances in which the criminal-procedural evidence is carried out". S.N. Ciurilov believes that a criminal prosecution situation is a specific reality, but not an informational model of it, which is true in our opinion. This reality comprises the sources of information, its specific carriers, with all their quantitative and qualitative characteristics [13, pp.143-144].

The most exhaustive set of components of the criminal prosecution situation is offered by R.S. Belkin, who supports the following principle: to consider only those factors that significantly influence the content of the criminal prosecution situation at the time of conducting the investigation. His proposal for highlighting in the content of the criminal prosecution situation the components of a psychological, informational, procedural-tactical, material and technical-organizational nature is a very productive one.

Full type assignment of criminal prosecution situations based on all their components is impossible, in the opinion of R.S. Belkin. However, a criminal prosecution situation, in his opinion "is always individual and, therefore, the type assignment of criminal prosecution situations in all their entirety of content is impossible. Criminal prosecution situations can be type assigned only based on one of their components...". He mentions the existence of information about the event and its participants as the object of type assignment [8, pp.95-96].

As it is argued by M. Gheorghita, the formation of the criminal prosecution situation is influenced by two categories of factors: objective and subjective. Objective factors reflect the condition in which the investigation process is carried out and which does not depend on the actions of a specific person (stages of the investigation, sources of information, the ability of evidence to retain information, applied technical and scientific means, collaboration with operational and investigative bodies, etc.). Subjective factors derive from the actions of the criminal prosecution officer and the behavior of the persons involved in the investigated case (qualities of the criminal prosecution officer, behavior and position of the person held accountable, optimal distribution of forces and their use in order to organize the prosecution of the perpetrators, etc.) [3, pp.313-314].

Forensic science has accepted that the determination of the main directions of criminal prosecution is based on the classification of the initial data, which characterizes the information component of the criminal prosecution situation. Based on the available information and guided by typical versions, the criminal prosecution body sets the direction of the investigation in general terms even before the start of criminal prosecution actions, and on its basis, plans and outlines its further activity [8, p.192].

This direction can be called the main (major), since it refers to the vector of the entire investigation, while during the criminal prosecution, in the event of the need to prioritize a certain fact and focus criminal prosecution actions on it (for example, to discover the weapon of the crime, etc.), specific directions of investigation may arise.

In the legal literature, attempts have been made to determine the typical directions of criminal prosecution at the initial stage in the event of its conduct in ordinary circumstances. In particular, certain recommendations are known making reference to directing the criminal prosecution into three segments, depending on the initial materials administered in criminal cases.

A.N. Vasiliev proposed expanding this type assignment of groups of criminal prosecution situations at the initial stage of criminal prosecution, in order to bring them closer to the diversity of situations that arise in practical activity. He identifies six typical criminal prosecution situations and the main directions of investigation corresponding to them [9, pp.41-43].

Methods and materials applied. The methodological foundations of the research are represented by the dialectical method of knowledge, as well as logical, comparative and legal, systemic and structural, and other specific methods of scientific research. Moreover, emphasis was placed on some fundamental provisions of the forensic science, criminal law and criminal procedure law.

In the framework of the scientific research of this topic and the exposition of the content of the article, the works of many authors in the field of forensic science were widely used, criminal procedure legislation was analyzed along with the regulations in the field of special investigative activity.

Discussions and results obtained. The principles and provisions of the methodology for investigating crimes described above are also acceptable for crimes committed in conditions of combat and war. However, they are applied here at later stages, when the criminal prosecution group (consisting of criminal prosecution officers, investigation officers and prosecutors) focuses entirely on the analysis of the factual circumstances of the committed crime.

At the initial stage, other principles and provisions come to the fore, reflecting the specificity of the situation that is taking shape in the conditions of combat as a whole. It is characterized by a number of features that determine a qualitatively different approach to setting up its particular manifestations and the corresponding directions of investigation. Among these features are, in particular, the short duration of the initial stage of criminal prosecution, the complex conditions of the combat situation, the legal regime of the state of emergency, insufficient technical, material and logistical provision, and others.

In the legal literature, attempts have been made to identify criminal prosecution situations arising in exceptional conditions, in combat conditions, and to setting up the corresponding directions of investigation of war crimes. In characterizing these criminal prosecution situations, the author V.E. Sidorov used two different signs (criteria). The first characterizes the general criminogenic situation in exceptional and combat conditions, considering which can represent a fundamental premise for determining typical directions of the investigation in this context.

The second sign refers to individual episodes of specific crimes and, in this sense, does not reflect the specificity of the investigation of crimes in exceptional and war conditions. It is part of a series of features determining criminal prosecution situations and the main directions of investigation in ordinary conditions.

This theoretical construction reflects the situations existing in reality. It uses both features (signs): initially, it divides all situations based on one of them – whether exceptional circumstances are maintained or not, and then, in each of these resulting situations, and based on the second sign, it identifies, in turn, a number of additional situations, on the basis of which it sets up the actions of the criminal prosecution bodies, aimed at finding out the specific circumstances of the case and administering the necessary evidence.

The author V.E. Sidorov, in general, does not aim to determine the main directions of investigation in exceptional and wartime conditions. He limits himself only to identify-

ing typical variants of action of investigative units, criminal prosecution bodies, aimed at revealing the perpetrators in the initial period of the investigation [12, pp.155-157].

However, the general approach he uses in solving the problem, which consists of determining the situations of criminal prosecution and the directions of action derived from them, based on the successive use of the targeted characteristic features, is a productive one.

The use of such an approach allowed us identifying the following main directions of investigating crimes in combat and war conditions: carrying out urgent criminal prosecution actions to discover, collect, preserve and research traces of the crime; actions of investigators in military operations; organization and conduct of search activities; organization of activity regarding the commission of specific criminal acts. However, these directions of investigation sufficiently reflect the specific nature of the activity of criminal prosecution bodies in the conditions of combat and war.

Given the above, it can be concluded that, as a basis for characterizing criminal prosecution situations and determining the main directions arising from them at the initial stage of investigating crimes in combat conditions, such a sign as the continued existence of exceptional circumstances (combat actions) should be placed as a result of exceptional conditions that have been formed (combat situation).

This largely determines the characterization of the criminal prosecution situation, as well as the main directions of the efforts of the operational and investigative subdivisions, and criminal prosecution bodies. The consistent use of this sign will allow us considering to a certain extent the specific nature of activities in combat and war conditions [10, p.124]. In parallel with the above, in practice we encounter other additional features that influence the situation and determine the specific directions of the investigation. Based on these features, a diversified system of situations is formed, which conditions the different directions of the initial stage of the investigation of crimes in combat and war conditions.

For this reason, in addition to the usual methodology for investigating certain types of crimes, a non-traditional and a rather general methodology has been formed, based precisely on the specificity of the armed conflict situation and combat conditions.

This is part of the category of relatively new methodologies, which cover several types of military crimes committed in special conditions of place and time, or against certain categories of persons, etc. An example of such methodologies is the methodology for investigating crimes related to the conduct of combat actions, which led to significant material and human losses, those regarding the justification of the use of heavy weapons and certain methods and means of combat, etc.

The volume of circumstances that must be proven in these criminal cases is difficult to imagine. Determining the number of victims during the fighting is also a considerable difficulty. The investigation of such large-scale criminal cases in itself, and in conditions of combat and war, presents a high degree of difficulty. Such large-scale criminal cases can be investigated only by applying the group investigation method, with the forces of joint criminal prosecution and operative-investigative teams [10, pp.125-126]. However, the combination of the means, forces and specialized intelligence of the two bodies is able to significantly increase the efficiency of their activity and, consequently, the ability to combat the criminal phenomenon [1, p.292].

The problem that is solved by applying interaction within the criminal trial is the

elimination of organizational gaps for the efficiency of investigations. At the same time, due to the flexible nature of this process, interaction can be occasionally adjusted to the specific situations that the criminal prosecution body is faced with [6, p.124].

One of the positive premises of interaction arises from the principle of free mutual subordination of criminal prosecution bodies and special investigative bodies, each of them exercising different attributions, using different legal methods and procedures, tactical and organizational combinations, which only in combination lead to the discovery of the crime. Strict adherence to the principles of interaction is an unavoidable solution for the elimination of conflict situations that have a negative impact on the achievement of the tasks of the criminal trial, in the context of the existence of multiple gaps [6, p.193].

Criminal prosecution, having as its task the discovery of the circumstances in which the criminal act was committed, represents a specific form of the process of knowledge of the objective reality related to the commission of a crime. Representatives of criminal prosecution bodies, through the activities carried out in order to administer evidence, in fact, cross the known path of the dialectics of the cognitive process: from the direct perception of facts and elements of fact, of the objects and persons involved, of their characteristic features and signs, to their legal analysis and practical verification of the discovered facts [1, p.511].

Successful investigation of such criminal cases is only possible under the conditions in which representatives of the criminal prosecution bodies, having the ability to understand the tactical-operational situation, will fully perceive the general goals of the operation and the specifics of its conduct. Before starting the criminal prosecution, it is necessary familiarizing oneself with the operational situation and the operational documentation of the combat under the management of the higher command, a picture of the operational situation at the time of the start of the military operation, its content and goals, the means available to the command and the measures undertaken by it to achieve the intended tasks, the causes of the failure of the combat operation and its consequences. For this reason, the investigation plan must comprise the verification of all the basic elements that, according to the rules of war, materialize the content of the actions of the military command during an armed conflict.

In addition, representatives of the criminal prosecution bodies must also consider the impact that the criminal prosecution actions will have on the results of the criminal trial. Moreover, the order of carrying out criminal prosecution actions that cannot be postponed at the initial stage of the investigation depends on the circumstances of the case.

However, in any case, at the beginning, it is most expedient to carry out the following activities:

1) Getting familiarized with the combat documentation and attach it to the materials of the criminal case;

2) Conducting an investigation of the crime scene;

3) Determining the circle of witnesses and carrying out their interrogation [10, p.126].

However, when getting familiarized with the combat documents, certain difficulties may arise. One should not rely too much on their accuracy, since quite often there is a tendency to 'embellish' reality during the drafting of combat reports. Moreover, often the information necessary for the investigation of war crimes cannot be found in combat documents.

When the situation allows, representatives of criminal prosecution bodies conduct an on-site (battlefield) investigation, with the mandatory involvement of appropriate military specialists. In this process, the peculiarities of investigating the crime scene under the impact of enemy fire must be considered (choosing the moment for examination, discretion, waiving field measurements, etc.), peculiarities that are described in detail in the specialized literature [5, pp.62-150].

It is also important to pay attention to the selection of relevant witnesses from a large number of eyewitnesses, since their statements represent the most frequent form of evidence, in this category of criminal cases as well. However, often the only information that the judicial body can accumulate comes from various people who by chance saw, heard or know something about the commission of the crime or about the criminals [4, p.501].

Representatives of the criminal prosecution bodies must organize the interrogation during the battle in a way that does not distract the commander from the management of the combat operation and, at the same time, obtain the statements necessary for the criminal case.

The author S.V. Malicov recommends interrogating witnesses and suspects with a map in front of them or asking those interrogated to draw up corresponding schemes during the interrogation. A map with the marked situation must be attached to the file, and each interrogation report, which describes the actions of the units on the ground, must be illustrated with appropriate schemes.

After analyzing the initial data collected, the representative of the criminal prosecution body clarifies the previous versions and plans next activities within the criminal case. During the subsequent investigation, the need for an operational military-tactical expert examination usually arises in order to assess the correctness of the decisions made by the commander. In this context, the direct superiors of the suspect (accused), as well as direct superiors from higher commands and other persons who participated in the development of the military operation, cannot be invited as experts.

In order the experts to be able to provide an objective assessment of the combat situation, to carry out calculations regarding military equipment, armament, manpower, methods and means of combat applied, it is important making available to them the necessary combat documents, maps and other types of information together with the materials of the criminal case. However, representatives of the criminal prosecution bodies must approach the conclusions of the expert report with a critical attitude, compare them to the specific conditions in which the event occurred, with other evidence collected in the case file and conscientiously verify the calculations of the expert report in relation to the existing operational situation [10, pp.128-129].

Further, the main direction of investigations in conditions of combat and war concerns the performance of criminal prosecution actions that do not suffer postponement for the discovery, seizure, preservation and investigation of traces of crimes: on-site investigation, interrogation of victims and witnesses, ordering and conducting judicial expert examinations, searches, seizures, etc. These actions are essential for identifying the facts and the persons involved in the commission of the crime, even in conditions of combat and war.

Within this direction of investigation, various situations of criminal prosecution can be identified, having specific signs and requiring corresponding directions of concentra-

tion of efforts of the criminal prosecution bodies. Thus, depending on the starting point, two situations are distinguished: in one of them, criminal prosecution actions that do not suffer postponement begin from the scene of the crime, and in the other – from the person suspected of committing the crime.

The work of representatives of criminal prosecution bodies is often complicated by the fact that, in case of delay, the operational situation changes fast, redeployment of units and subdivisions occurs, witnesses are often killed or injured, and the conditions of the crime scene change due to shelling or the place is occupied by the enemy, etc. Therefore, one should not act with delay in the investigation of criminal cases in conditions of combat and war, but at the same time, everything must be done to high standards, in order to fully investigate the circumstances of the case. It is also important to consider the influence of the general political and social context in the area of armed conflict on the representatives of the criminal prosecution bodies, as well as the way in which the events, especially the ongoing investigations, are perceived by the local population. These factors can affect both the conduct of the criminal prosecution and the relations between the investigative authorities and the local community [10, pp.129-130]. Besides, the possible resistance to the criminal prosecution bodies should be considered, as the criminal prosecution activity is always opposed by certain individuals or groups of individuals. In the opinion of M. Gheorghita "it is well known that no person who has committed a harmful act wants to be held criminally liable for the actions committed. The perpetrators strive to evade responsibility or bear less responsibility, and therefore, even if they are not detained at the time of committing the crime or immediately after it, practically the majority of them either hide some circumstances of the crime or minimize their role in the preparation and commission of the illicit act" [2, pp.80-81].

After the completion of the criminal prosecution actions that do not suffer postponement, the team consisting of criminal prosecution and investigation officers proceeds to the next stage of the investigation, where a review of the previously collected materials is carried out. The need for this review is determined by the unavoidable difficulties, specific to the conditions of war and armed conflict, by certain difficulties in organizing the obtaining of results in an operative manner, in analyzing and accounting for the work carried out by the joint working teams, consisting of representatives of criminal prosecution bodies and investigation officers.

In conditions of combat and war, a specific direction of investigation also appears, namely the participation of representatives of criminal prosecution bodies in military operations, with the aim of documenting the circumstances of combat actions; discovering, recording, collecting, preserving and researching traces of crimes committed within them. This type of activity is essential for ensuring complete and correct documentation of the facts in order to conduct an efficient criminal prosecution.

The selection and content of the actions of criminal prosecution bodies also depend on the specifics of particular criminal prosecution situations, which are determined by the type of military operation (to suppress armed resistance, to destroy illegal armed groups, etc.), the object of interest of the criminal prosecution bodies, the legal and organizational forms of documenting the circumstances of the case, and others. All these factors influence the way in which investigations are conducted, thus ensuring an efficient adaptation to the context of the military operation and the specificity of the investigated case [10, p.131]. However, the discovery and sanctioning of criminal acts presuppose, first of all,

a complete criminal prosecution, the sole purpose of which is to find the truth. The full clarification of the facts and circumstances can lead either to the confirmation of the accusation or to its removal, the truth being one [7, p.363].

Another specific area of investigations in conditions of combat and war is the organization and conduct of search activities, with the aim of finding perpetrators avoiding criminal prosecution or hiding certain stolen goods, etc. Such activities are often carried out to search for missing persons, to identify graves or mass graves with the bodies of captured civilians or soldiers. All these operations are essential for the management of evidence and for clarifying the circumstances in which various events took place during the armed conflict. Within the framework of search activities, there can also be identified some more specific situations and directions of investigation. They vary depending on the place of search, the objects searched, the forces and means involved, etc. Each of these factors influences the way in which search operations are organized and carried out.

A substantial impact on the investigation of war crimes is exerted by forensic records, which present a scientifically substantiated system of recording, classifying, systematizing, preserving and using data pertaining to persons and objects that have forensic importance and can be used for the purpose of clarifying the circumstances of criminal cases. Their purpose is to provide law enforcement agencies with the official information necessary to identify persons and objects, as well as to contribute appropriately to the verification of facts and circumstances that constitute the truth [3, p.130].

Organization refers, on the one hand, to the creation of working conditions, the preparation and distribution of the forces and means available to the respective bodies, and, on the other hand, to the ordering, based on the work plan, of the activities and measures necessary to achieve the proposed goal, which is the full clarification of the facts and circumstances that may contribute to finding out of the truth in a criminal trial.

Planning, in turn, represents the most important aspect of the organization of the investigation of criminal acts, ensuring its conduct in accordance with legal requirements, in a thorough, objective and complete manner. However, the investigation of criminal acts is inconceivable except on the basis of a work plan, a well-thought-out program and based on a deep analysis of the data provided by the act at a certain stage of criminal prosecution [1, pp.280-281].

Planning, as a complex mental activity, represents the basic condition and method of rational organization of the investigation of the criminal case. Unplanned and improperly organized investigation turns into a disorderly and chaotic activity with an unpredictable outcome [4, p.53].

In all situations, the investigation is aimed at carrying out enormous criminal prosecution actions. However, one should not neglect the opportunities for rapid discovery of certain criminal acts. Therefore, an essential direction of the investigation should be the organization of the activity of discovery of certain crimes. This includes the conduct of criminal prosecution actions that do not suffer postponement (on-site investigation, interrogations, body examinations, searches and detentions, ordering and conducting judicial expert examinations, lineups) and the transition, without interruption, to the next stage of the investigation, until the full identification of the perpetrators, the completion of the criminal prosecution and the referral of criminal cases to the courts, competent for their examination.

The traditional methodology of investigating certain types of crimes, adapted for

ordinary conditions, is used in these cases to a significant extent. Within the analyzed direction of investigation, situations prevail in which there is information about the event of the crime and about the guilty person. These situations allow the application of standardized investigative procedures, which include the collection of evidence, the interrogation of witnesses and suspects, as well as carrying out other investigative actions aimed at finding out the circumstances of the case.

At later stages, this direction of investigation becomes predominant. At the initial stage, however, it is combined with other main directions of investigation: top-priority investigative actions – the activities within military operations or search activities [10, p.132]. This combination allows for adapting to the specific circumstances of the case, thus ensuring a comprehensive and effective approach at each stage of the investigative process.

Conclusions. The system of investigative directions for crimes committed in combat and war conditions is formed from both main directions and specific directions that relate to the main ones. The main investigative directions vary depending on whether the circumstances that led to the exceptional conditions have been eliminated or not. These differences determine the approach and strategy adopted in each case, considering the specificity of the operational context and the evolution of the situation on the ground. Within the main directions mentioned, depending on the specific situations that arise under the influence of certain factors, specific directions of investigation of war crimes are identified. These specific directions are adapted to the particularities of each individual situation, thus allowing representatives of criminal prosecution bodies to respond effectively to the challenges encountered in the process of investigating crimes committed in conditions of combat or war.

In practice, the above-mentioned directions of investigation are quite rarely encountered in a "pure" form. Usually, the criminal prosecution situation is made up of a complex of components that impose (require) simultaneous actions in several directions. In order to cover several directions of investigation, specialized criminal prosecution teams are often formed, such as filtering teams, documentation teams, teams for conducting on-site investigations, search teams, etc. These groups allow for a coordinated and efficient approach, thus ensuring that all aspects related to the investigation of war crimes will be dealt with appropriately.

The organization and tactics of the initial criminal prosecution actions carried out by representatives of criminal prosecution bodies in combat and war conditions, within each of the mentioned directions, are characterized by a series of essential features, the knowledge of which will allow for a significant increase in the efficiency of the work of investigating this category of criminal acts. However, all these features include fast adaptation to changes in the combat environment, appropriate management of the resources available for investigating crimes in war conditions, considering the risks and prioritizing actions depending on the specific circumstances of the criminal cases, thus ensuring an efficient and complete investigation, even in difficult conditions of war crimes.

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THE SPECIAL LEGAL OBJECT OF THE MONEY LAUNDERING OFFENSE. LEGAL PERSPECTIVES

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Summary

The present article analyzes the procedures of clarification of an essential element of the crime of money laundering – the legal object, with an emphasis on the special legal object of this crime. Considering the complexity and dynamics of money laundering, the grounds of its criminalization and the definition of its legal subject have undergone significant development. A correct definition of the specific legal subject of money laundering contributes to the effective protection of social values, thus ensuring a legal circulation of assets and a sustainable economy as a whole.

The study outlines the legal perspectives on the specific legal subject of money laundering, including aspects of international regulation of the specific legal subject of money laundering, which allow us to get a comprehensive picture of the subject.

Keywords: specific legal object of the money laundering offense, social values, legal circuit of goods.

Introduction. One of the primary tasks of any researcher in the legal-criminal characterization of a crime is to determine its legal object. The author Al. Boroi argues that "in order to defend social values, the state, through the legislative body, has regulated by organic law numerous social relations that relate to the behavior of people towards these values. If a human manifestation, in the form of an action or inaction, harms a social relationship concerning a social value protected by the criminal law, the act committed is criminal, and if it meets the other conditions provided by the law, it is considered a crime having as its object the social relationship in question" [1].

The object of the crime is formed by the social values and the social relations created around these values, which are damaged or violated by the criminal act [2].

According to authors Alexandru Borodac and Marian Gherman, the object of the crime is an obligatory element inherent to every crime, because there can be no crimes without an object of the crime.

A summary of the relevance of determining the object of the crime was also described by V.I. Tații, who argues that it is essential to understand the concept of social values protected by criminal law and the object of attention in the case of a crime and the difference between them [3].

In Romanian doctrine, the object of the offense is defined in terms of the social value and the social relations formed around and because of this value, distinguishing two

categories of object. In concrete terms: a legal object, i.e. the values and social relations effectively threatened or harmed, and a material object of the offense, which means the material object (an object or a thing, an animal, a person's body), through which the social relations formed around them are threatened or harmed [4].

The topicality of the research lies in the fact that the clarification of the social relations that form the legal object of the offense allows to understand the content of the offense, to determine the degree of the offense and to determine the degree of the damage and makes it possible to frame it in a correct methodical legal method.

The methodology underlying the study is a combination of methods specific to the legal sciences: method of logical analysis, focused on the idea of logical reasoning, the application of which allowed the legal argumentation of the opinions, theses and findings made, including legal interpretations related to the legal object of the crime; comparative method, a method that allowed the synthesis and examination of the regulations in the field, based on the similarities, differences identified; theoretical method, used to develop or examine legal theories related to the special legal object of the crime of money laundering and explore new directions of thinking in the field, etc.

The criminal doctrine divides the object of the crime into 2 distinctive categories: *the legal object of the crime* – as an expression of the insensible aspects of the values and social relations protected by the law; and *the material object of the crime* – as a materialized expression of the protected social values [5].

The legal object of an offense is represented by the social values and relations threatened or attacked, against which the specific harmful act is directed. Segmentation of the legal object is understood as: the general legal object, the generic (group) legal object and the special legal object.

The general legal object of the offense is the totality of social relations related to the rule of law, i.e. relating to all the social values protected by criminal law. The social values thus protected by the criminal law against offenses are expressly listed in Article 2 of the Criminal Code, and are: "the person, his 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, and the entire order of law".

The generic (group) legal object, as an integral part of the general legal object, is made up of a group of homogeneous social relations [6], dependent on each other, which are attacked by a homogeneous group of offenses [5, p.140]. Determination of the generic legal object of the offense is made according to the name of the chapter of the special part of the Criminal Code, and it is the marginal name of the chapter that determines the criteria for grouping offenses within it. The list of generic objects is not exhaustive. It is established and modified by the legislator in accordance with the importance of a group of social relations recognized at that time and due to the emergence of new social categories that need to be protected by criminal law.

Consequently, we can deduce that the general legal object of the money laundering offense (Article 243 of the Criminal Code) is determined by the totality of values and social relations established around it, protected by the criminal law against offenses.

Discussions an results obtained. The rationale of criminalization and the determination of the legal object protected in the case of the money laundering offense have sparked wide-ranging doctrinal discussions in several countries of the world. The difficulty in determining the protected social value is generated by the fact that the offense

was originally regulated with a view to combating drug trafficking, this being the only predicate offense at that time, which later, the scope of application was extended, so that currently, any profit-generating crime may constitute a predicate offense for money laundering.

The problem in determining the legal subject matter is also highlighted by the fact that states have integrated the criminalization norm into their legal system as covering different social values. For example, the Swiss Criminal Code [7, Art. 305bis and Art. 305ter] criminalizes money laundering as an offence against the administration of justice, while the Spanish Criminal Code [8, Art. 301] criminalizes it as an offence against property and the socio-economic order. Money laundering is criminalized in the Italian Criminal Code and in the French Criminal Code in the same way as an offence against property. In the German Criminal Code, money laundering is criminalized in the same section as the offences of aiding and abetting and concealment, which would suggest that it is a crime against the administration of justice, but this is only one of the widely divergent doctrinal opinions on the subject [9].

Moreover, it has been argued that the doctrinal controversy is subjective, because it attempts to legitimize criminalization by attributing protected social values ex post facto [10, p.105], whereas the construction of the incriminating norm should start from the social value it is meant to protect and not the other way around, from the incriminating norm to the protected social value.

On the whole, it has been identified that the protected legal object constitutes the social relations through which the state protects the legal circuit (financial, banking, economic, commercial and civil) in order to prevent and combat the illegal circuit of the assets derived from the commission of crimes [11, p.285], either patrimonial relations for the normal course of which it is necessary not to conceal the illegal origin of the proceeds of crime in order to prevent the authorities from identifying the illicit source and to ensure that criminals control the illegally obtained profits [12] or to protect the financial sector and other vulnerable activities from the harmful effects of the proceeds of crime [13, p.43].

As can be noted, all these ideologies have in common the idea that the criminalization of the crime is intended to protect the economic-financial system against the integration of "dirty money" into the legal circuit, an idea that is also found in the preamble of the European directives adopted in this area. At the same time, the provisions of Art.6 para. (2) lit. (c) of the European Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime [14], according to which "knowledge of the illicit origin of the property may also be inferred from the specific circumstances of the commission of the act".

As well, it is argued that in addition to the social value described above, the crime also protects a secondary social value, namely the realization of justice, since the acts of disguising the proceeds of crime prevent the truth from being uncovered and thus undermine social relations regarding the realization of justice. In a different vein, some legal scholars hold the view that the secondary legal object of the crime of money laundering is the protection of social values relating to a person's assets [15, p.181]. However, this interpretation is not shared by the national legislator, since the criminal actions of committing the crime of money laundering are not directed against the person or his property, there is no victim by committing the crime of money laundering.

In the context of the above, the doctrine emphasizes that the criminalization of

money laundering is intended to protect the economic-financial system. Although the opinions of experts differ, the common ideological idea is that the criminalizing norm protects the social relations within the economic-financial circuit.

In Spanish doctrine on this issue, it has been noted that money laundering undermines the transparency of the financial system, discredits financial institutions and other bodies operating in the economic circuit, essentially affecting the security of commercial relations, aspects which together distort competition between market players, which is why it was necessary to criminalize it [16, p.129]. In Germany, the protection of the economic-financial system is only one of the opinions expressed on the legal object. It is considered that the criminalization rule, by protecting the economic-financial system against infiltration of "dirty" money, in fact defends the confidence of citizens in this system, in which the need for protection of the single market is emphasized [17].

The reasoning is invulnerable to criticism, arguing that the concept is vague and does not explain the connection between the existence of illicit goods in the economy and the damage to public trust, and that public trust would no longer be affected if the proceeds of the crime are no longer "contaminated" by a transaction with a bona fide person [18, p.92]. At the same time, it has been argued in foreign doctrine, specifically in German and Italian, that the offense of money laundering, by distorting economic relations, diminishes the individual's ability to develop economically. The argument is since in Italy the offense is included among those against property. Thus, the notion of patrimony is reinterpreted as a dynamic concept involving tangible and intangible assets, as well as economic relations aimed at human development [18, p.93]. Consequently, the money laundering offense would impair the individual's capacity to develop economically. In the same vein, it has been argued that fair competition would be impaired, as the individual acting in accordance with the law will be disadvantaged compared to market players profiting from the offenses [19].

In retrospect, we note that some CIS states, for example Belarus, Georgia, Kazakhstan, Kyrgyzstan, have criminalized money laundering, the generic, similar legal object of which is the social relations concerning the normal conduct of economic activity.

The Romanian legislator shares the opinion that the legal object of the money laundering offense is a complex one, the social values protected by the criminalization norm being, on the one hand, the protection of social relations regarding the financial system through the natural and lawful conduct of the flows of goods and values through financial institutions, while protecting it from the harmful effects of the gains derived from crimes, and, on the other hand, the protection of social relations that ensure the proper administration of justice [20].

An interesting approach to the legal object of the money laundering offense is that *it coincides with the legal object of the predicate or predicate offense.*

In German law it is argued that since the money laundering offense has a deterrent role, namely, to combat other crimes by depriving offenders of illicit proceeds, it would protect the same social values as the crimes from which the laundered proceeds originate [21, p.63, p.89]. The objection to this theory is that the legal subject matter becomes too broad, considerably extending the limits of criminalization [22, p.90], and this together with the equally narrow definition of the material element may give rise to abuses, as it provides an unlimited power to prosecute and charge a person [23]. Moreover, it has been suggested that there would be no causal relationship between the conduct that would

constitute the money laundering offense and the damage to the legal subject matter of the predicate offenses, the relationship appearing to be at least indirect [23, p.90].

In Spanish law, this doctrinal thesis has been transposed in relation to money laundering, as follows: drug trafficking is a series of activities, beginning with the cultivation and obtaining of prohibited substances and ending with the laundering of the proceeds. Thus, all conduct relating to drug trafficking, including money laundering, harms the same social value – public health [24, p.113, p.125]. Therefore, even though money laundering may be an important tool in the fight against drug trafficking, it cannot be confused with the protected legal object. The fight against drug trafficking or other offenses appears as a purpose of the criminalization rule and not as a protected social value [25, p.127].

We can state that this doctrinal reasoning arose because money laundering has a strong deterrent character, contributing to the fight against crime by depriving criminals of illicit proceeds. Subsequently, we consider that this does not lead to the conclusion that it would protect the legal object of the predicate offenses, since the fight against crime appears as an indirect effect, not as the basis of criminalization. Subsidiarily, according to the principle of offensiveness, for criminal liability to arise, it is not sufficient that an act is provided for by criminal law, moreover, it is necessary that it harms a social value [26, p.345]. As a result, the introduction into the legal circuit of the proceeds of drug trafficking no longer affects public health except in an extremely indirect way, by arguing that criminal activity relating to drug trafficking could possibly be continued in this way. Thus, if the criminal activity relating to drug trafficking ceases and the proceeds of drug trafficking continue to be lawfully available, it in no way harms public health.

Therefore, in accordance with the aforementioned doctrinal viewpoint, we consider that *protecting the legal object of the predicate offenses is an indirect effect of the criminalization rule, but not its legal object.*

Just as the establishment of the criminal norm in the legislation of the Republic of Moldova was dictated by the need to harmonize national legislation with international legislation in order to prevent and combat money laundering, the Republic of Moldova has also followed this divisive path in determining the legal object of the crime of money laundering.

The Moldavian legislator categorized the crime of money laundering in Chapter X Economic Crimes, thus considering as the generic legal object of the crime of money laundering, the protection of values and social relations whose proper functioning is conditioned by the economic activity of the state.

In this context, according to the authors Al. Barbăneagră, V. Berliba, C. Gurschi, in the primary drafting of the Criminal Code [27], it is stated that the object of the money laundering offense is formed by the relations that ensure the normal conduct of economic activity and the functioning of the financial system. The authors have not commented on the category of the legal object – is it generic or specific. In other words, it can be concluded that the criminal doctrinal experts consider the legal object elucidated above to be special and complex. Thus, the correlation between the notions of economic activity, financial activity and banking activity is to be established.

In this vein, we conclude that the generic legal object of the money laundering offense consists of all social relations whose existence and normal development is conditioned by the protection of the state's economic activity.

In the following presentation, we argue that the special legal object has the char-

acter of concretization of the generic object of the offense, it presupposes specific social relations that are subsumed to fundamental social values or relations.

Literally, a few years later, the legal substantiation presented above by the national scholars was materialized under the following sentence, the direct object of the crime is the social relations whose existence and normal development are conditioned by the legal circulation of goods [28]. We conclude the authors' opinion on the protection of values and social relations related to the legal circulation of goods, considering them as an integral part of the specific legal object of the money laundering crime.

A similar approach is also supported by the legislation of the Russian Federation [29], so that the special object of the composition of the offense of money laundering (Легализация (отмывание) денежных средств) is formed by social relations ensuring the credit-money circuit in the sphere of economic activity. In particular, the Russian legal framework, illustrates the special legal object of the money laundering offense (both in Art.174 and 1741 of the Russian Criminal Code) as "the procedure established for the implementation of entrepreneurial or other economic activities, reflected by the material object – money or other property acquired by criminal means" [30]. Considering the modern understanding of the legal object not only as a social relation, but also as a legal good, А.Э. Жалиннским defines the special legal object related to "the economic security of the state, the stability of the financial system and the interests of justice, which is to prevent evading criminal liability by using criminally acquired property/assets" [31].

The Romanian doctrine states that the special legal object of the money laundering offense is a complex one, which concerns both the social relations relating to the legal circuit of assets and those relating to the administration of justice, in the latter case because the commission of money laundering creates difficulties in the discovery of the primary offense [32]. We can agree in part with the Romanian legislator, since all types of offenses interconnected or dependent on the commission of the predicate/predicate/principal offense create difficulties in the discovery of the primary offense, affecting more or less the administration of justice. In this regard, we agree with the opinion that the special legal object of the money laundering offense is represented, on the one hand, by the social relations and values regarding the legal circuit of assets.

According to the authors S. Brânză, V. Stati, the special legal object of the offense provided for in para. (1) Article 243 of the Criminal Code of the Republic of Moldova is formed by the social relations regarding the lawful source and origin, as well as the correct circulation in financial transactions of funds, goods or income [33]. We note that the notorious expression of the perpetrators related to the special legal object of the crime of money laundering is based on the materialization of the harmful act through alternative methods provided for in para. (1) of Article 243 of the Criminal Code. At the same time, we will try to support this opinion in accordance with the most recent amendments to the relevant legislation, which operates with the notion of "source of the goods", so that the notions rendered by the doctrinal scholars of the source and origin of the goods are stratified. In the same context, the legislator has regulated the concept of property, which includes in the category of property also money means (funds) and income, as well as other types of property.

In conclusion, in accordance with the national regulations, we can state that the special legal object of the money laundering offense is represented by *the social relations regarding the source of the goods and the legal circulation in the financial operations of the*

goods.

Consistent with the understanding of the legal object of the money laundering offense, we distinguish the scope of the "property" that may form the subject matter of the money laundering offense is determined by reference to the special normative act on the matter, which defines this concept, implicitly determining its scope. From this perspective, the material object of the offense under investigation is determined by the composition of the incriminating norm (Art. 243 of the Criminal Code) and the content of the special law on the matter – Law No.308/2018 on preventing and combating money laundering and terrorism financing, including international regulations and standards to which the Republic of Moldova has aligned itself.

In this sense, pursuant to Art.3 of Law No. 308/2017, *assets* are financial means, virtual assets, funds, income, any category of tangible or intangible, movable or immovable, tangible or intangible values (assets), as well as documents or other legal instruments in any form, including electronic or digital form, which attest a title or right, including any share (interest) with respect to these values (assets). A similar regulation concerning the definition of the concept of property and the categories to which it belongs is contained in Art.132[1] of the Criminal Code.

Conclusions. The prevention of criminal activities, including money laundering, in the most effective and timely manner is determined by determining those actions that should be covered by the objective side of the offense. In this regard, elucidation of the legal object of the offense is a mandatory prerequisite for the correct legal classification of the offense in strict compliance with the principle of legality of incrimination [34].

The determination of the specific legal subject matter of the money laundering offense is interpreted differently in different countries around the world, depending on the specific legal, economic, and social context of each country. Thus, in some legal systems, the legal object may be seen as the social relations regarding *the dispensation of justice*, since money laundering affects the ability of the authorities to apply and enforce the law, including by obstructing judicial mechanisms and investigative processes. In other jurisdictions, it can be argued that the crime affects *wealth and the socio-economic order*, as illicit financial flows destabilize markets, undermine national economies, and affect the integrity of the financial system. In many cases, the legislator considers that money laundering has a *direct impact on the state economy*, in that the funds derived from illegal activities distort the development of the state economy and create conditions for parallel or underground economies. In other countries, the special legal object of the offense concerned can be defined in terms of *the legal circuit of assets in the financial system*, as money laundering involves complex operations, which affect the fairness and transparency of the financial market.

In the local conception, we can state that the generic legal object of the money laundering offense is the protection of values and social relations whose proper development is conditioned by the economic activity of the state. With reference to the specific legal object of the money laundering phenomenon, in the context of the legal aspects researched in this paper, in accordance with the national legal system, we conclude that it is determined by the social relations regarding the source of goods and the legal circulation in the financial operations of goods. Ensuring social relations on the source of goods and their legal circulation is essential for protecting the economic and financial integrity of a society.

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BRIEF CONSIDERATIONS ON PROTECTION MEASURES FOR VICTIMS OF DOMESTIC VIOLENCE OR VICTIMS OF SEXUAL OFFENCES FROM THE POINT OF VIEW OF THE RIGHT TO PRIVACY

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Summary

The right to apply protective measures, essential for protecting victims, often leads to a violation of the right to privacy. Protective measures correspond to the safety of all those persons who have been victims as a result of the commission of crimes or abuses. The purpose of protective measures as a whole is to prevent re-victimization, but also to protect the rights of victims and to provide them with support for their recovery. In this regard, the importance of the study is determined precisely by the need to identify legislative gaps that affect this right to privacy.

The study conducted allows to establish the directions and trends of criminal procedure in the line of ensuring and realizing the right to privacy from the point of view of protective measures for victims of domestic violence and victims of sexual nature. Practical aspects of respecting the right to privacy from this point of view 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: protection measures, right to privacy, victims of domestic violence, victims of sexual nature.

Introduction. The importance and necessity of the study, to identify the shortcomings in the legislation regarding the protection measures for victims of domestic violence or victims of sexual crimes, causes of respect for the right to privacy. Thus, the present study imposes precisely the need to offer such suggestions to obtain an adequate social reaction regarding such situations.

Methods and materials applied. The research methods include the logical method, using the induction technique, by identifying the shortcomings, as well as the deduction technique, to clarify the current situation, both through own documentation and through the norms that lead to the non-respect of the right to privacy of victims of domestic violence or victims of sexual crimes; of the denouncing witnesses in the criminal prosecution phase, but also the analytical method of the aspects identified with an analysis of the laws in force. Also, the empirical method (presentation of practical situations) is applied to this study.

Discussions and results obtained. Measures to protect victims of domestic violence or victims of sexual crimes are legal mechanisms and actions implemented to ensure the safety and well-being of such victims. These measures aim to protect their right to privacy, to provide them with recovery support and, last but not least, to prevent re-victimization, through psychological counseling services, physical protection, safe shelters, legal support and other interventions tailored to the specific needs of the victims. In Romania, such measures are regulated by the legislation in force, such as the Law on the Prevention

and Combating of Domestic Violence. Even if the protection measures include the temporary evacuation of the aggressor from the shared home, regardless of ownership, the prohibition of approaching the victim, her family members or places frequented by the victim, the prohibition of contact with the victim, including by telephone or other means of communication, these essential measures, considered protective, regulated by legislation, are not sufficient for their protection, since the applied measure creates a state of discomfort for the aggressor that cannot be controlled in the future, and there is no other form of verification and protection of the victims during the period of the measure. Why do we mention it? The simple protection measure not followed by a control of the verification may lead to the aggressor violating the measure and the impossibility of preventing the victims. These aggressors must also be applied, as a result of the protection measure, psychological counseling, as a complementary measure to the aggression or the commission of the crime in sexual life, which may lead to the perpetrators giving up the commission of the acts when they are thinking of committing it. Also, as a measure, the psychologist, when counseling the perpetrators, when he discovers the intention and thought of the perpetrators to continue committing the crimes, should be obliged to notify the competent authorities. Not infrequently, victims of domestic violence or victims of sexual crimes have been victims of other abuses subsequent to the application of protective measures by the perpetrators, without being able to prove them. The moments not covered by Romanian legislation are created as a result of the application of the measure, from that moment until the moment, when applicable, of the commission of another subsequent crime, are due to the lack of monitoring imposed and applied by the legislation.

As an example identified following our own investigations, of a violation of the right to privacy, and identification of the lack of application norms in the legislation, in the aforementioned interval, after the application of the protection measure, we mention the criminal file 973/290/P/2025 of the Prosecutor's Office [1], victim M.E., perpetrator P.G. In fact, the said P.G., in cohabitation for 12 years with the said M.E.'s daughter, 3 years ago, raped M.E.'s mother-in-law. He was sentenced to a 4-year prison sentence and conditionally released in January 2025, with a remainder of the sentence of 510 days. The court prohibited the said P.G. as an accessory measure the right to communicate with the injured person M. E., or to approach her for a period of 2 years from the execution or consideration as executed of the main sentence.

Offenders who commit sexual crimes, according to Romanian law, enter the surveillance program, according to Law No.118/2019, respectively in the National Automated Registry of Persons Who Have Committed Sexual Crimes. Since his release, the said P.G. periodically reports to the police every 3 months to sign a schedule. Checks are made on the home, living environment, without any checks, since he knows the victim M.E.

In March, the said M.E. contacted the police on a certain date and reported that the said P.G. who raped her 2 years ago, was released from prison and was knocking on her apartment window. It was established that the said P.G. had sent her messages both on the social network Facebook Messenger and text messages. In these messages, he told her that he was in front of the injured person's apartment building and that he wanted to talk to her. He wanted the injured person to call him urgently. The injured person did not answer either the calls or the messages. Also, since she lived on the ground floor, at around 8:00 p.m., she heard knocks on the balcony, kitchen and bedroom windows. Then, she heard the access door to the apartment building. She looked through the peephole

and recognized him. The said P.G. was found by the police near the injured person's home. It turned out that the said P.G. did not comply with the accessory measure of communicating with the injured person and approaching him, ordered by the court, following the conviction. The measure of detention was taken. The author mentioned that he wanted to talk to his ex-mother-in-law because he had to come to an agreement with her regarding the amount of money imposed by the court. Understanding the effect of the violation of the accessory measure, the said P.G. no longer acted visibly, the authorities not having the possibility to monitor him and since there was no measure, e.g. psychological counseling, the author depending on the way of thinking, can commit a crime against the victim, this time hidden. Problems can arise at any moment, the victim not being able to control a possible protection measure. We ask ourselves whether we can consider the need for ex officio application and introduction into a protection program, only for the violation of the accessory measure to communicate with the victim and make contact with him, ordered by the court.

The protection order is a legal measure through which a person in danger, especially due to domestic violence, can request the court to impose restrictions on the aggressor. This measure must prevent physical, psychological, sexual or economic abuse, but also ensure the safety of the victim.

Also, the case Munteanu v. Republic of Moldova, from June 3, 2012, is eloquent in this sense. "The applicants are a mother and son. Shortly after the first applicant's husband lost his job, he began to drink heavily, became violent towards the applicants and sold household goods in order to buy alcohol. In 2007, he severely beat the first applicant, who was hospitalized for 3 weeks. The violence, both verbal and physical, continued thereafter. The second applicant was also repeatedly beaten and insulted and often went to friends' houses to prepare for school or to avoid domestic scandals and other violence. The applicants complain in particular that the authorities tolerated the abuses by the first applicant's husband and that, by failing to enforce the protection order, they created an impression of impunity" [2].

The case of Eremia and Others v. the Republic of Moldova, of 28 May 2013, is also eloquent for the violation of the right to private life. "The first applicant and her two daughters complained that the Moldovan authorities had failed to provide them with protection against the violent and abusive conduct of their husband and father, a police officer. The Court held that there had been a violation of Article 3 (prohibition of inhuman or degrading treatment) of the Convention in the case of the first applicant, in that although they were aware of the acts of violence to which she was subjected, the authorities had failed to take effective measures against her husband and to prevent the continuation of the domestic violence. It also held that there had been a violation of Article 8 (right to respect for private and family life) of the Convention in respect of the daughters, given that, despite the negative psychological effects on them of witnessing the violence to which their father subjected their mother in the family home, little or no measures had been taken to prevent the recurrence of such conduct. Finally, the Court held that there had been violated Article 14 (prohibition of discrimination) of the Convention, taken in conjunction with Article 3, in respect of the first applicant, finding that the authorities' actions had not merely constituted a simple failure or delay in responding to the acts of violence to which she had been subjected, but had also amounted to a tolerance of such repeated acts of violence, reflecting a discriminatory attitude towards the first applicant as a woman. In this

regard, the Court observed that the conclusions of the United Nations Special Rapporteur on violence against women, its causes and consequences did nothing more than support the impression that the authorities did not fully appreciate the seriousness and extent of the problem of domestic violence in the Republic of Moldova and its discriminatory effect on women" [3].

In Romania, the term of the protection order is considered essential for the protection of victims of domestic violence or victims of sexual crimes. In this sense, we say that the order is essential only to the extent that they are effectively protected, not when there is a possibility of violation of the measure.

Although the court may decide on certain obligations and prohibitions applied to the aggressor, expressly provided, such as: temporary eviction of the aggressor from the shared home, regardless of whether he is the owner; reintegration of the victim and children into the family home, after the aggressor's eviction; limitation of the aggressor's right to use a part of the shared home, in order to avoid contact with the victim; accommodation of the victim and children in an assistance center, if necessary; obligation of the aggressor to maintain a minimum distance from the victim and his family members; prohibition of traveling to certain localities or areas frequented by the victim; prohibition of any contact with the victim, including by telephone or by correspondence; surrender of weapons held to the police; establishing the residence of minor children and entrusting them to a parent; and other obligations, which are expressly provided for by Art.38 para. (3-5) of Law No.217/2003 [4] RO; supporting the rent and/or maintenance of the temporary housing where the victim and children are moved; obliging the aggressor to psychological counseling or psychotherapy; monitoring compliance with the order through periodic reports to the police and spontaneous checks, the application of other unforeseen situations not expressly provided for and applied at any time depending on the situation leading to the immediate protection of the right to private life is not provided for.

The protection order is practically the legal instrument that protects victims of domestic violence or victims of sexual crimes, also from the point of view of the right to private life, through correct application. The purpose of the order being compliance for "prevention of recurrence" and thus guaranteeing the safety of those affected. In this regard, victims of domestic violence or victims of sexual crimes should be encouraged to seek the support of the authorities and use all legal means to protect themselves against aggressors, and the authorities should be given greater discretion to apply protective measures and introduce obligations in the Criminal Code for possible acts that may subsequently lead to abuse or violence against these categories of victims.

In Romanian Law No.26/2024 [5] establishes the legal framework for issuing a protection order in all situations of violence that may endanger the life, freedom or physical and mental integrity of a person. Thus, the violence that may constitute grounds for requesting a protection order includes: physical aggression, sexual violence, threats that instill fear, repeated stalking of a person, telephone calls or other forms of remote communication with an intimidating effect, online harassment, coercion or intimidation of the victim so as not to notify the authorities, abusive use of information to humiliate and silence the victim, attempts to influence statements or to determine a person to provide false testimony, as well as any other manifestations of physical or psychological violence.

Although the Protection Order can be issued immediately by the police officer only if, following the assessment of a situation, it is found that there is an imminent risk of vi-

olence that may endanger the life, freedom or physical and mental integrity of the victim, it is not and should not apply only if there is a risk because this risk can be triggered later, prevention in this regard should also include in the possible situation, even if it may be an extreme measure, but certainly for the safety of the victims. The procedure in Romania establishes the existence of a real risk by the police officers, who analyze the situation based on the available evidence and the risk assessment form. If the conditions for issuing the order are not met, the victims are informed about the possibility of requesting a protection order through the court, not in the probable situation.

If, following this analysis, the necessary conditions for issuing a protection order are not met, the police officer is obliged to inform the victim about the possibility of requesting such an order through a written request. The necessary form is also made available by the police officer, and once the application is submitted, the provisional order is issued on the spot, with a validity of no more than five days. This method can ensure the protection of victims from possible aggression, abuse, etc. The advantage of applying it is that any violation of the measures established by the provisional protection order constitutes a crime and can attract severe legal sanctions.

If the aggressor has nowhere to live after the eviction, he is informed and directed to homeless accommodation centers or night shelters managed by the local authorities. At the aggressor's request, he can be taken to such a center by the mobile social assistance team.

The order becomes enforceable immediately, without notice or delay, and the 5-day period is calculated exactly, i.e. 120 hours from the moment of issuance. It is communicated to both the aggressor and the victim.

After issuance, the police transmit the order to the competent prosecutor's office, within 24 hours, for confirmation. The prosecutor decides, within 48 hours, whether the protection measures should be maintained or terminated. If the measures are considered necessary, the prosecutor applies an administrative resolution and submits the order to the competent court, together with the supporting documents and a request for the issuance of a protection order valid for up to 6 months.

During the judicial proceedings, the initial 5-day duration of the provisional order is automatically extended. The aggressor is informed of this extension.

Victim protection measures are legal, social and institutional actions and procedures intended, as mentioned, to provide safety, support and assistance to persons who have been affected by crimes or abuses. These measures may include:

1. *Legal interventions*: issuing protection orders to prevent the perpetrator from contacting the victim.

2. *Psychological support*: counseling and therapy to help victims recover emotionally.

3. *Safe havens*: providing places of refuge for victims who are in immediate danger.

4. *Legal aid*: informing victims of their rights and supporting them in legal proceedings.

5. *Education and awareness*: creating public campaigns to prevent abuse and support victims.

The aim of these measures is certainly to protect victims of domestic violence or victims of sexual crimes, to facilitate their reintegration into society and to provide them with a sense of safety and dignity.

The specific legal procedures involved in protecting victims of domestic and sexual

crimes must include several stages, designed to ensure their safety and rights, including:

1. *Filing a complaint*. The victim can file a complaint with the police or the prosecutor's office, detailing the facts and requesting the intervention of the authorities. The authorities must intervene and present this right to protection to the victims, as an obligation.

2. *Requesting a protection order*. The victim can request a protection order that prohibits the aggressor from approaching, communicating with or having any contact with her. The order can be issued on an emergency basis.

3. *Investigating the case*. The authorities (police or prosecutor's office) conduct an investigation to gather evidence and establish the circumstances of the crime.

4. *Criminal trial*. After the investigation is completed, the case can be sent to court, and the aggressor will be subject to judicial proceedings.

5. A*ccess to support services*. The victim should have the right to psychological counselling, free legal aid and, in certain cases, shelter in a specialised centre.

With regard to protection measures, the margin of manoeuvre enjoyed by the victim is considered to be when requesting the issuance of a protection measure, since the victim himself, together with his family, the prosecutor, the police and any relevant authority must be able to request a protection order.

The protection order can be used to stop a wrongful act, such as domestic violence or a sexual offence. As part of the criminal procedure, a protection order can also be issued as a complementary instrument or condition for the suspension of a prison sentence. During the trial phase, a protection order can be imposed to prevent any contact between the offender and the victim as an alternative to preventive detention.

As part of the sentence, the competent judicial authorities can impose a measure restricting the person's freedom. In the post-trial stage, a protection order may be imposed as a precondition for granting conditional release. This means that the latter may be associated with specific requirements, for example, that the convicted person cannot contact or communicate with the victim, their relatives, or any other persons, determined by the judge. The existence of emergency protection measures is also uneven across the selection of cases examined.

Restraining orders are, however, crucial in cases of immediate danger, to guarantee the protection of victims of domestic violence or victims of sexual crimes. Romania and the Republic of Moldova have included in their legal systems protective measures, which apply from the moment a risk has been identified, not in possible cases. The variations in the protection regimes in these situations depend on how the crimes have been defined and addressed. Gender-based violence, however, deserves great attention.

The right to privacy can also be violated by the opposing party, by people who simulate domestic violence. This aspect is due to the interest produced as a result of family conflicts, one of the spouses or partners disturbed, often acts to distort the truth in order to obtain a protection order, with the aim of removing the other partner or spouse from the marital home. This form of distortion of the truth is often used by female persons. Let us take as an example the specifications of the author Valentina Elena Preda who mentions a classic scenario, "the one in which the victim provokes her aggressor, who records the audio-video without her knowledge, or the making of undated photo plates, in which the victim appears with messy hair, red ears, pinched arms or scratched fingers, claiming to have been a victim of domestic violence. Minors are also included in this scenario,

the objective being to prevent the realization of the personal bond program between the child and the parent from whom he was separated. That is precisely why the courts analyze these requests very carefully, by reporting on the concrete and objective evidence presented by the victim" [6].

The author took over from the practice of the courts the analysis of the protection order. In this regard, the court opined that "issuing a protection order implies restrictions on the rights and freedoms of the person, so that it can only be established in the event that there is unequivocal proof of the exercise of acts of violence of a certain gravity towards the victim, likely to put her in imminent danger, which would make it necessary to remove the aggressor from her, in order not to endanger her life, physical and mental integrity or freedom".

Therefore, the premise for issuing a protection order, an essentially exceptional measure, is the existence of a state of danger, the applicant being obliged to prove the fulfillment of several admissibility conditions, including the serious, current and imminent danger to which his life, health or physical and mental integrity would be exposed in the absence of the police body or the court ordering this measure to restrict the rights and freedoms of the person accused of aggression" [6].

At the same time, as has been held in the jurisprudence of national courts, "the protection order, given its restrictive nature of rights, can only be issued on the basis of solid evidence that shows a state of danger and to remove a state of danger. In order to issue the protection order, it is necessary to meet the conditions regarding the existence of acts of violence, regardless of the form of manifestation and the state of danger generated by a genuine conflict report, which must meet the requirement of actuality" [6].

In the same vein, the power of the protection measure can be disposed of in various forms. For example, in Romania, a prosecutor obtained a protection order against the ex-wife of her current partner, with whom she had come to pick up her husband's two daughters, on the occasion of which she mentioned that the ex-wife of her current partner "filmed her while she was in her car (...) with her 2-year-old son, became verbally aggressive, screaming and swearing, creating a very high state of panic in him, and the 2-year-old minor was very scared, crying hysterically". As a result, the protection order produced consequences in that the ex-wife of the partner no longer had the right to approach even her two daughters [7].

The absurd aspects and the interest, as well as the knowledge of the effects of the measures of the protection order of the prosecutor were later annulled in court, the right to privacy being thus violated.

Conclusions and recommendations. The study includes legal means of protection that also suffer interference in implementation. In this regard, we recommend that the application of protection measures be carried out urgently and immediately and expanded depending on the establishment of risks and on the possible risks that may arise.

Additionally, public information is more strongly required regarding such protection measures, as a form of prevention among the population, but also the introduction of new criminal sanctions on persons who simulate serious and imminent danger, with the aim of producing a consequence.

Last but not least, the introduction of a single notification system at national level, which could also consist in discouraging criminal elements in committing the acts.

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CRIME PREVENTION AND CONTROL: CURRENT CHALLENGES AND PROSPECTS

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Summary

The article analyzes the key challenges in the field of crime prevention and law enforcement at the international, national, and local levels. The main threats discussed include transnational organized crime, cybercrime, corruption, and terrorism. Criminal groups operate across borders, making international cooperation essential in combating drug trafficking, human trafficking, and financial crimes. The rise in cybercrime requires strengthened cybersecurity policies, information literacy, and the use of AI to detect threats. Corruption undermines trust in public institutions, necessitating stricter anti-corruption measures and transparency in governance. Terrorism continues to evolve, demanding advanced intelligence strategies and programs to prevent radicalization. The article explores effective methods of fighting crime, including legislative reform, the implementation of Big Data, blockchain, and artificial intelligence, as well as improvements to the penitentiary system.

Keywords: crime prevention, artificial intelligence, anti-corruption measures, cybercrime.

Introduction. Crime remains one of the key threats to public safety, economic development, and political stability. Dynamic changes in the world related to globalization, digital technologies, economic crises, and military conflicts affect the nature of crime, making it more complex and sophisticated. This requires states not only to react firmly but also to develop preventive strategies aimed at minimizing the risks and consequences of criminal activity.

The significant growth of organized crime has become a serious challenge for law enforcement agencies around the world. This phenomenon encompasses a wide range of illegal activities, from drug and human trafficking to financial fraud and cybercrime. Modern criminal groups operate through a clearly structured organization resembling large corporations, where each member performs a specific role. They use widespread corruption networks, advanced digital technologies, and complex financial mechanisms to legalize illegally obtained profits. In particular, many criminal organizations involve professional financiers, lawyers, and IT specialists to develop sophisticated money laundering schemes, which complicates their detection and prosecution.

One of the most developed areas of organized criminal activity is the drug trade. Drug cartels, which previously operated only through physical supply channels, now actively use the Darknet to sell narcotic substances. The anonymity provided by encrypted platforms and cryptocurrency payments makes such operations almost invisible to traditional law enforcement systems. This significantly complicates the work of police and investigative bodies, as most transactions occur without physical contact between the seller and buyer, and drug supply routes increasingly involve unmanned aerial vehicles and other modern technologies.

In addition, international terrorist organizations are often financed through the illegal trade in weapons, drugs, and other illicit operations. For example, there are confirmed cases in which radical groups received funds via cryptocurrency transfers, allowing them to bypass financial oversight by banking institutions. At the same time, organized criminal groups and terrorist networks often cooperate, exchanging resources, logistics, and financial channels. This creates additional challenges for law enforcement, as countering one threat is often inherently linked to combating another.

Beyond traditional spheres of activity, organized crime is increasingly penetrating the digital economy. Cybercriminals use advanced methods to attack financial institutions, government bodies, and major corporations. By using social engineering, malicious software, and exploiting system vulnerabilities, they steal large volumes of data and financial assets. According to expert estimates, global losses from cybercrime are measured in hundreds of billions of dollars annually.

Given the scale and complexity of modern organized crime, effective counteraction is impossible without close international cooperation. Intelligence sharing, joint operations between law enforcement agencies of various countries and the development of a unified system for combating organized criminal networks are key success factors. For instance, the work of Europol and Interpol demonstrates the effectiveness of coordination across jurisdictions, enabling the detection and dismantling of major international criminal networks.

Cybercrime has grown significantly over the past decade. Offenders use sophisticated techniques such as phishing, social engineering, and hacking attacks on financial institutions and government entities. Cryptocurrencies which were originally promoted as tools of financial freedom, have now become means of money laundering and financing terrorist organizations. Therefore, combating cybercrime requires not only the implementation of advanced information security technologies but also the improvement of digital security legislation, which will enable more effective investigation and prosecution of such crimes.

However, the fight against organized crime must be comprehensive. In addition to law enforcement measures, social, economic, and legal reforms are necessary to reduce the attractiveness of a criminal lifestyle. Improving the standard of living for the population, creating economic opportunities for young people, ensuring effective justice, and implementing anti-corruption initiatives are integral components of a successful strategy to combat this phenomenon.

Corruption remains one of the greatest barriers to fighting crime. It not only undermines trust in state institutions but also weakens the effectiveness of the law enforcement system, creating conditions for impunity for criminals. According to Transparency International, corruption actively interacts with organized crime, creating a situation where criminals can act with impunity, bolstering their activities through corrupt ties in state bodies. For instance, in India and Mexico, where corruption in the police and courts has become systemic, criminal groups effectively control local law enforcement. Studies show that in these countries, some law enforcement officers may be directly or indirectly involved in organizing drug trafficking, extorting bribes, etc.

In countries where corruption has become an almost inseparable part of the state apparatus, criminal groups can effectively control specific state bodies. This complicates the fight against them, as law enforcement agencies can either be neutralized through

corrupt connections or even collaborate with criminals. According to Global Financial Integrity, corruption can distort the functioning of justice, making it impossible to fairly punish individuals engaged in organized crime. In such conditions, combating criminals requires not only criminal sanctions but also radical reforms in public administration and law enforcement activities [1].

One of the promising ways to fight corruption is the implementation of anti-corruption mechanisms. For example, the use of electronic document circulation can significantly reduce the number of bribery cases by ensuring an automatic and transparent process for handling state documents. Another important element in fighting corruption is the use of blockchain technology in public administration. Blockchain ensures complete transparency of financial transactions, preventing the possibility of data falsification or concealment. For example, in some European countries, blockchain solutions are already actively implemented for registering real estate and land plots, significantly reducing the level of corruption in these areas.

Another important initiative is the creation of independent anti-corruption bodies with the authority not only to conduct investigations, but also to have access to key state data, allowing for effective detection of corruption schemes. Such bodies, like the National Anti-Corruption Bureau of Ukraine have proven their effectiveness in fighting high-level corruption, though in practice, they require further strengthening of their independence and access to funding.

According to the Transparency International Report for 2024, corruption remains a serious issue in many countries, including Ukraine, where the Corruption Perceptions Index has remained at 35 out of 100 points. This indicates that despite successes in combating corruption, significant progress has not yet been achieved, and countries need to make more efforts to create effective control and transparency mechanisms in all areas of state activity [2].

Modern technologies and bodies created to fight corruption undoubtedly contribute to reducing its scale. However, their application requires continuous improvement and international support to ensure not only national security, but also the creation of conditions for the sustainable development of democratic institutions.

One of the key aspects of modern crime fighting is the implementation of advanced technologies that significantly change the approaches to law enforcement and criminal investigations. With the development of digital technologies and the increasing volume of information, law enforcement agencies have gained new tools for fighting crime. The use of technologies such as big data analysis, artificial intelligence, and recognition systems has been a significant step forward in improving the effectiveness of crime prevention. These technologies allow not only the improvement of existing methods of combating crime, but also create new opportunities for predicting and preventing criminal actions.

One of the main tools actively used in the fight against crime is big data analysis. Thanks to this tool, law enforcement agencies can process huge volumes of information from various sources and identify patterns that might have remained unnoticed using traditional investigation methods. Data analysis allows law enforcement officers to predict potential crimes, detect behavioral patterns of suspects, and identify connections between criminal groups. For example, in large cities, where a significant number of offenses are recorded daily, such technologies can help identify high-crime areas or predict the time and place of potential crimes, allowing for preventive measures to be taken.

Thanks to technologies such as PredPol, which use machine learning algorithms to predict crimes, it has become possible to significantly reduce crime levels. PredPol analyzes data on crimes that occurred over a certain period and, based on this data, determines where and when the next crime might occur. This allows the police to direct their resources to the most crime-prone areas, thereby increasing the effectiveness of operational measures. For example, in California, after the introduction of this program, street crimes decreased by 20%. Thanks to this method, law enforcement agencies can make more accurate predictions, reducing crime and increasing public safety [3].

Equally important is the use of artificial intelligence in criminal investigations. With the development of this technology, it has become possible to automate many processes that previously required human labor, such as video and audio analysis. AI systems allow automatic face and voice recognition which significantly speeds up the identification of suspects. This is especially important for law enforcement agencies, as it reduces investigation time and increases their efficiency. For example, the automatic facial recognition system is actively used in countries with high levels of video surveillance, such as China, where this technology has helped significantly reduce crime rates in large cities.

One important area where AI can be useful is in the fight against phone fraud. Voice recognition allows not only the identification of a criminal, but also the gathering of additional evidence for an investigation. Using voice recognition technologies, law enforcement can identify individuals calling from suspicious numbers used for fraud and quickly initiate an investigation.

Another example of successful use of modern technologies is the Automatic Number Plate Recognition (ANPR) system. This technology helps quickly detect stolen vehicles, allowing law enforcement agencies to respond promptly to vehicle theft-related crimes. ANPR systems are used to automatically scan vehicle number plates on roads. This not only helps detect stolen vehicles, but also allows authorities to determine whether certain vehicles are connected to other crimes, such as transporting illegal goods.

In the UK, where this system is an integral part of police work, 522,214 stolen vehicles were registered from 2009 to 2018, of which 236,636 were returned, accounting for approximately 45% of the total number of stolen vehicles [4].

This also allows for the identification of vehicles involved in crimes, including theft or the transportation of illegal goods. License plate recognition is not only an effective tool in combating car thefts, but also contributes to investigations in broader criminal cases.

The success of implementing cutting-edge technologies in the fight against crime is confirmed by the significant number of positive outcomes. For instance, Gartner reported in 2022 that over 40% of major law enforcement agencies worldwide are already actively using Big Data technologies for crime prediction [5]. This shows that the application of these technologies has become an important tool in the fight against organized crime and terrorism. At the same time, according to the International Association of Chiefs of Police (IACP), more than 60% of Police Departments in the United States plan to integrate artificial intelligence technologies and facial recognition into their operational processes within the next 5 years [6].

Technologies actively used in modern law enforcement not only enhance the effectiveness of crime fighting, but also open up new opportunities to improve citizens' safety. They allow law enforcement to significantly accelerate investigations, increase the accu-

racy of crime prediction, and reduce the number of offenses.

To strengthen the effectiveness of the fight against crime, it is necessary to reform the legislative system so that punishments for criminals become more just and to ensure preventive measures to prevent offenses. One important direction is the improvement of the criminal code, which includes the introduction of harsher sanctions for economic and cybercrimes. The improvement of legislation also implies simplifying procedures for international cooperation within the justice framework, which will significantly enhance the efficiency of law enforcement activities. At the same time, it is important to maintain a balance so that the fight against crime does not lead to the violation of fundamental human rights and freedoms.

Currently, the national legislations of many countries need adaptation to modern challenges, especially in the context of transnational crime. Within these changes, it is particularly important to integrate provisions of international agreements, such as the Rome Statute of the International Criminal Court, which defines the rules for criminal liability for international crimes. Additionally, the improvement of the criminal code is necessary for better combating economic crimes, which cause serious harm to the national economy, as well as cybercrime, which is increasingly becoming a global problem. Reforms in this area will ensure that law enforcement can conduct investigations more effectively and apply punishments appropriate to the severity of the crimes committed.

Crimes related to economic fraud and cybercrime tend to develop quickly, as the growth of technology provides new opportunities for abuse. Therefore, one priority is the introduction of stricter sanctions for such offenses. In this context, international standards, such as the EU General Data Protection Regulation (GDPR), serve as an example of how strict measures can help reduce offenses related to the processing of personal data. The imposition of high fines for violations of this regulation encourages businesses and organizations to strictly comply with security standards, which ultimately reduces the level of cybercrime.

In the context of the globalization of crime, it is important to ensure effective cooperation between countries, which will allow them to fight organized criminal groups in a coordinated manner. Simplifying procedures for international cooperation in the legal field, particularly in the framework of mutual recognition of verdicts and the extradition of criminals, will significantly enhance the efficiency of investigations and punishments. Such cooperation is especially relevant in the fight against transnational crimes, such as drug trafficking, terrorism, corruption, and others, which have no borders. As a result, the operational response and effectiveness of law enforcement in responding to crimes will increase.

Despite the importance of fighting crime, it is necessary to ensure the protection of human rights so that this fight does not infringe on fundamental freedoms. All actions of law enforcement and judicial bodies must comply with international human rights standards, ensuring that all individuals, even those accused of crimes, enjoy the right to a fair trial and humane treatment. Ensuring a balance between the effectiveness of the fight against crime and the protection of human rights is an important aspect of the stability of the legal system of any country.

The reform of the penitentiary system is also an important element of a comprehensive strategy for combating crime. The outdated punishment system, based primarily on imprisonment, is not always effective.

In some countries, the introduction of alternative methods of punishment, such as probation, electronic monitoring, and rehabilitation programs for convicted persons, has significantly reduced recidivism rates. One of the most successful examples is the use of probation in the UK. After the introduction of the probation program, the country saw a 14% reduction in recidivism within the first three years of its operation [7]. This demonstrates the effectiveness of such alternative methods, allowing convicted individuals to avoid long-term imprisonment while still being monitored and given the opportunity to integrate into society. Probation not only reduces the burden on the penitentiary system, but also decreases the likelihood of a convict reoffending. The success of this program can be measured by the reduction in recidivism and the improvement of the resocialization level of offenders.

The implementation of electronic monitoring is also an important step in reducing recidivism. In the United States, the use of electronic bracelets allows authorities to track the movements of convicts and ensure their supervision, which significantly reduces the risk of reoffending. Studies show that as a result of using this technology, the recidivism rate among participants in the program was reduced by 30% compared to those who were not subject to electronic monitoring [8]. This allows convicts to fulfill their obligations, work, attend educational courses, or participate in rehabilitation programs without the need to stay in closed facilities, significantly reducing the costs of maintaining prisoners.

Moreover, improving conditions in correctional facilities is an important element in the process of resocializing offenders. For example, a study in Sweden showed that improving detention conditions, including access to education, vocational training, and psychological support, led to a 20% reduction in recidivism [9]. It is important to note that such improvement of conditions is not limited to the material support of inmates, but also provides access to social and educational programs that foster the development of new skills and positive habits among offenders. This helps them adapt to society after release and significantly reduces the likelihood of reoffending.

Alternative punishment methods and the improvement of conditions in correctional facilities also contribute to the humanization of the criminal justice system. They provide convicted individuals with a real chance to change their behavior and reduce the risk of recidivism without excessive pressure and the need for long-term imprisonment. Furthermore, such methods help reduce the burden on the penitentiary system, which is economically efficient and allows resources to be focused on the most dangerous criminals.

The implementation of these methods is an important step toward reducing crime and increasing public safety, as well as promoting the creation of an effective, just, and humane criminal system. Given the positive experience of countries such as the UK, the USA, and Sweden, it is crucial to actively incorporate these methods into national criminal justice systems to achieve sustainable results in the fight against recidivist crime.

Equally important is the prevention of crime by raising the legal awareness of the population. Information campaigns, educational programs for youth, social initiatives to prevent violence and drug addiction contribute to reducing crime levels in the long term. The experience of developed countries shows that involving the public in shaping security policies, active cooperation between the police and the public, and the implementation of early intervention programs help create a safer environment.

Conclusions. Therefore, crime prevention and fighting require a comprehensive ap-

proach that combines legal, technological, and social mechanisms. The use of innovative technologies, strengthening international cooperation, reforming law enforcement agencies and the penitentiary system, as well as increasing citizens' legal awareness, are key areas for effectively combating crime. In modern conditions, only the combined efforts of the state, society, and international partners can ensure security and law and order in a country.

Only through the integration of all the aforementioned factors can true success be achieved in the fight against criminal activity, ensuring citizens reliable protection and favorable conditions for the country's development. Only by the joint efforts of the state, the public, and international partners can a fair legal system be created where each crime receives appropriate punishment and potential crimes are timely prevented through technological and legal innovations.

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THEORETICAL AND PRACTICAL ASPECTS REGARDING THE APPLICATION OF CRIMINAL LIABILITY FOR POOR-QUALITY CONSTRUCTION EXECUTION

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Summary

The objectives of this investigation consist in analyzing the theoretical and practical aspects of the application of criminal liability for the offense provided for in Article 257 of the Criminal Code of the Republic of Moldova. Also, this paper examines the constitutive elements of the offense of improper execution of constructions, highlighting the particularities of the special subject, object, objective and subjective sides of it. In the given context, the normative acts, national and other states' doctrine, as well as the relevant judicial practice are analyzed, in order to provide the interpretation and qualification applied in accordance with the criminal norm.

At the same time, the investigation includes the analysis of comparative aspects of similar regulations in other jurisdictions, which reveal similar aspects and differences in criminal legislation, as well as the impact and effectiveness of mechanisms of criminal liability, including proposing solutions for improving the legal framework in terms of preventing and combating the crime of improper execution of construction.

Keywords: qualification of the offense, construction, improper execution, offense, objective side, subjective side, object, criminal liability, subject.

Introduction. According to Art.257, which provides for criminal liability for unsatisfactory execution of construction works, which more precisely provides for "the letting for use of residential houses, industrial sites, transport and energy constructions, other constructions in an unsatisfactory state, unfinished or not in accordance with the project conditions by the heads of construction organisations, site managers and persons with responsibility exercising quality control in construction". Including provides for, the continuation by the responsible persons of works improperly executed and stopped by control acts [1].

Design, checking, expertise, realisation by the responsible persons of an urban development or construction or execution of modifications there to without complying with the provisions of normative documents on safety, strength and stability, if this has resulted in: a) serious injury to the bodily integrity or health of the person or loss of the person's capacity to work; b) total or partial destruction of the construction; c) destruction or failure of important installations or machinery; d) damage on a large scale, including, actions that caused the death of the person.

In the given context, the offence of improper execution of constructions, in the light of the development of infrastructure and the construction sector, generates problems of a technical, social and legislative nature, which leads to the generation of obstacles in the evolution of this field, as well as to the commission of illegal acts in both the public and private sectors.

Through the provisions of the Urban Planning and Building Code adopted in 2023 [2], *the quality of construction* is understood as: "the result of the totality of the building's performance in terms of behaviour in service, with the aim of satisfying the fundamental requirements throughout its entire lifetime". Similarly, the present code provides for the notion of *construction*, which means: "building, civil engineering construction or special construction, the realisation of which consists in the execution of any structure fixed in or on the ground, of a permanent or temporary nature and conceived, designed and executed for the fulfillment or provision of technical, economic, social or environmental functions, regardless of its specificity, purpose, category and class of importance, including the installations, equipment and technological and functional machinery related thereto".

In order to obtain quality construction, the design and quality execution of the construction shall be carried out in such a way that, throughout the entire lifetime of the construction, the fulfillments of the fundamental requirements applicable to construction is ensured. And, according to Article 335 of the Town Planning and Building Code of the Republic of Moldova, it is necessary that they fulfill the following requirements:

– Structural integrity of buildings;

– Protection of buildings against fire;

– Protection of workers and building users against negative effects on hygiene and health conditions caused by the construction;

– Protection of workers and users of construction works against personal injuries caused by construction works;

– Resistance to sound propagation and acoustic properties of constructions;

– Energy efficiency and thermal performance of buildings;

– Prevention of hazardous emissions into the environment from buildings;

– Sustainable use of natural resources from which buildings are made.

In total, all non-conformities which lead to a lowering of the prescribed level of the fundamental requirements applicable to buildings are considered as serious defects. And, the factors involved in the conception, design, execution, operation and post-use of constructions bear criminal liability, as the case may be, for the realisation and maintenance, throughout their entire lifetime, of constructions of adequate quality, on which we will elaborate further in this study, which involves the analysis of criminal liability for the substandard execution of constructions.

Methods and materials applied. Following the elaboration and research of the subject of the study, the following research methods specific to the legal-criminal analysis and criminal liability in the context of special offences under Article 257 of the Criminal Code of the Republic of Moldova, were used the methods of analysis, deductive and inductive methods, comparative method and synthesis method, which contributed to the investigation of the subject of the research. The concept of the applied materials includes the theoretical-legal and practical bases, which involve doctrinal materials, the domestic criminal legal framework, the international legal framework, in particular the specialised doctrinal literature, which directly addresses the essence of criminal liability for the unqualified execution of constructions.

Discussions and results obtained. The offence provided by Article 257 of the Criminal Code of the RM, under Chapter X "Economic Offences", is a complex offence that has a special legal object and a secondary legal object, which are to be elucidated in accordance with the standard variants of the offence. Thus, the special legal subject-matter of the

offence is the social relations concerning the compliance of the building use with quality requirements. According to the author V. Stati "the improvement of the quality of construction depends on the scientific technological progress, which consequently leads to the increase of production efficiency. As well as, the achievements in science, engineering, organisation of production ultimately reflect the quality of products and services" [2, p.633]. In the case of the offence referred to in paragraph (2) Art.257 of the RM CP, the special legal object is the social relations with regard to the continuation by the responsible persons of improperly executed works stopped by acts of control [3, p.637].

We are in the presence of a special legal object of a complex nature, which has as its primary legal object, the social relations concerning the safety, resistance and stability of an urban complex or of a construction, and in the case of a secondary legal object, constitutes:

• Paragraph (3) letter a) Art.257 CP of the RM – has as secondary legal object, social relations with regard to the health and integrity of the person or the integrity, substance and potential utilisation of the construction, important installations or machinery;

• Paragraph (3) letter b) Art.257 CP – has as secondary legal object, the social relations with regard to the integrity, substance and potential use of the construction;

• Paragraph (3) letter c) Art.257 CP – has as secondary legal object, social relations with regard to the integrity, substance and potential utilization of important installations or equipment.

According to Article 257 para.(4) of the Criminal Code of the Republic of Moldova, the offence referred in this article, has a complex main legal object: the main legal object is formed by social relations regarding the safety, resistance and stability of an urban complex or a construction, and the secondary legal object is formed by social relations regarding the life of a person.

In the following, we will discuss the material (immaterial) object of the offence of improper use of constructions specified in paragraph (1) of Article 257 CPP RM, as the case may be: 1) residential houses; 2) industrial facilities; 3) transport and energy constructions; 4) other constructions. And, these must be in an unsatisfactory state, unfinished or not complying with the conditions of the project [4, p.314]. In the case of paragraph (2) Art.257 CP of the RM, we are in the presence of the immaterial object which is the works improperly executed and stopped by control acts [4, p.317]. According to paragraph (3) letter a)-c) and paragraph (4) Art.257 CP, the material object is also a complex as in the case of the special legal object, having as main material object the urban complex or the construction, and the secondary material object which constitutes the urban complex or the construction:

• Paragraph (3) letter a) Art.257 CP of the RM – has the person's body as secondary material object;

• Paragraph (3) letter b) Art.257 CP – has as secondary material object the building totally or partially destroyed;

• Paragraph (3) letter c) Art.257 CP – has as secondary material object the plant or machinery which is of importance;

• Paragraph (4) Article 257 CC – has as secondary material object the person's body.

At the same time, the offence referred to in paragraph (1) Article 257 of the Criminal Code of RM, has as a victim, the investor of the construction put into use in an unsatisfactory, unfinished or inadequate state, or in a state that does not comply with the conditions of the project.

In this respect, in accordance with the legislation regulating the construction sector,

such as Law No.163 on the authorisation of the execution of construction works, according to which the investor is the natural or legal person who finances the construction works and who may be the holder of the construction authorisation or the beneficiary of the construction. In the case of Romanian legislation, i.e. Law No.50/1991 on the authorisation of construction works [5], the investor is defined as the natural or legal person who provides the financing for the construction of a building, being the holder of a real right over the land or the existing building, or the beneficiary of the investment. The offence referred to paragraph (2) Article 257 of the Criminal Code of the Republic of Moldova, also victimises the investor of the construction whose resistance and stability may be affected as a result of the continuation by the perpetrator of the works improperly executed and stopped by control acts.

The victim of the offence stipulated in letter a), paragraph (3) Art.257 CC is: 1) the investor of the urban complex or of the construction that was either designed, checked, assessed or built by the perpetrator, or was subject to modifications by the perpetrator without complying with the provisions of the normative documents on safety, resistance and stability; 2) the person who suffered serious injury to the body or health or loss of working capacity.

According to the author Gh. Gladchi [6, p.73], states that the notion of victim, in the components of those offences by which the person is harmed, more precisely expresses the qualitative framing of the victim as a special social conflict, i.e. as a victim of the offender, in the respective offence.

According to the offence subject to legal-criminal analysis, the victim is also the natural person who has suffered serious injury to the bodily integrity or health or loss of working capacity, in this regard we refer to the explanations of the analysis of the material object of the offence provided for in letter a) paragraph (3) Art.257 of the Criminal Code of the Republic of Moldova.

In the case of offences referred to in letters b), c) and d) paragraph (3) Art.257 CP, the victim is the investor of the urban development complex or of the construction that either were designed, checked, expert-assessed or built by the perpetrator, or were subject to modifications by the perpetrator without complying with the provisions of the normative documents on safety, resistance and stability.

The victim of the offence referred to in paragraph (4) Article 257 (4) CC is: 1) the investor of the urban complex or of the construction that was either designed, checked, appraised or built by the perpetrator, or was subject to modifications by the perpetrator without complying with the provisions of the normative documents on safety, resistance and stability; 2) the deceased person. In this regard, we refer to the analysis of the material object provided for in paragraph (4) Art.257 CC.

The objective side of the offence consists of the actions or inactions that led to the non-compliant execution of the construction. These include giving an unfinished or incomplete construction for use and continuing work without complying with technical standards. The objective side implies that the offence is consummated when the construction is handed over or used, irrespective of whether or not there have been immediate material consequences, such as the collapse of the construction.

The subjective aspect of the offence provided for in paragraph (1) of Article 257 CC is characterised by direct intention. The subjective aspect of the offence provided for in paragraphs (2), (3) letter a)-c) and para.(4) of Article 257 is characterised by direct or indirect intent. The motive of the offence in question consists, in the most frequent cases, in the superficiality manifested in relation to the fulfillment of the obligations undertaken.

In this regard, the subject of the offence provided for in Article 257 of the Criminal Code of the Republic of Moldova is: 1) the responsible person who at the time of committing the offence has reached the age of 16; 2) the legal person (except public authorities). The subject of the offence referred to in paragraph (1) and paragraph (2) of Article 257 of the Criminal Code of the Republic of Moldova, i.e. the subject of improper execution of constructions may be: the responsible natural person who at the time of committing the offence has reached the age of 16 years; the legal person (except public authorities). The natural person [5] must have one of the following three special qualities: head of the construction organisation; site manager (site supervisor); person with a responsible position exercising quality control in construction.

From a comparative point of view, the criminal legislation of various countries regulates the offence of non-compliant construction, taking into account the risks to public safety. In Romania, Article 31 of Law No.10/1995 on quality in construction makes it an offence to design, check, appraise or execute constructions without complying with the technical rules on stability and resistance, if they are likely to cause loss of human life, personal injury, destruction of the construction or other serious consequences. The active subject of the offence can be both natural and legal persons, including specialists such as designers, verifiers and certified experts [7]. Also, Ordinance No.2/2002 regulates the activity of judicial and extra-judicial technical expertise, establishing that criminal liability also applies to legal persons involved in this field.

In the Russian Federation, Article 216 of the Criminal Code [8], provides sanctions for violation of safety rules during the execution of construction, mining or other works, if they cause serious injury, death of a person or death of two or more persons.

The German Criminal Code regulates criminal liability in relation to the execution of construction works in Section XXVIII entitled "Offences endangering public safety", Art.319 – "Endangerment of construction works" [9]. Thus, the German criminal law provides that: a person when designing or executing a construction or demolition of a construction, violates recognised general rules of technology, thereby endangering the physical integrity and life of another person; likewise a person who, in the exercise of a trade or profession, violates recognised general rules of technology when designing, directing or executing a project to equip a construction with technical equipment or to modify such equipment, thereby endangering the physical integrity and life of another person.

In Portugal, Article 277 of the Criminal Code provides for "Breach of building regulations, damage to installations and disruption of services"[10], criminalising actions that affect the safety of buildings, installations and essential public services.

The Criminal Code of Croatia [11] by Article 221 regulates "Dangerous execution of construction works" and stipulates that: whoever, in the course of designing, carrying out specialised supervision of a construction, execution of certain works or demolition of a building, acting contrary to generally recognised professional regulations or rules, causes a state of a danger to human life or property of significant value.

Conclusions. In conclusion, the present study reflects the analysis of the offence provided for in Article 257 of the Criminal Code of the Republic of Moldova, which reveals a high social danger of improper execution of constructions, with serious consequences on public safety and integrity of persons and their property. Ensuring compliance with safety, resistance and stability standards is essential for the prevention of such offences, and improving the legal framework and their practical application is essential in the con-

text of preventing and combating the offence of unqualified building work. The offence analysed has a complex legal subject matter, including both the protection of human health and life and the integrity of buildings and infrastructure.

At the same time, a comparative analysis of the criminal legislation of other countries shows similarities in the regulation of criminal liability for non-compliant constructions, but also differences in terms of sanctions and subjects of the offence. Moreover, the criminal liability for this offence lies mainly with the heads of construction organisations, site supervisors and other persons in charge of controlling the quality of works. The comparative study indicates that national criminal legislation can be improved by adjusting sanctions and clarifying certain provisions relating to the criminal liability of persons involved in the construction process. In this respect, it is important to strengthen the mechanisms for verifying the quality of construction, by intensifying state controls and imposing stricter requirements for the certification and authorisation of builders.

Furthermore, it is recommended to update and supplement the criminal law rules by defining more precisely the aggravating circumstances and the criteria for assessing the quality of construction, with a view to uniform application of the law. It is recommended to align national regulations with international standards in the field of construction safety, taking into account good practices in other jurisdictions and European building regulations.

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THE NATIONAL REGULATORY FRAMEWORK GOVERNING JUDICIAL BALLISTIC EXPERTISE

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Summary

The normative framework regulating judicial ballistics expertise is the basis of judicial expertise activity as a whole, and the quality of legislative regulations has a direct impact on practical activities and institutional capacities in the field of judicial expertise, crime prevention and combating, as well as on the quality of activities in the field of control of the legal arms circuit in the Republic of Moldova.

The legal provisions have an impact on the process of training judicial experts, the form and content of the judicial report, the way in which judicial ballistic expert reports are used as scientific evidence on the basis of which illegal acts are assessed, and also determine the possibilities for using ballistic judicial reports in crime prevention and in carrying out rigorous control of the civilian circulation of weapons.

This article addresses the following issues: special legislation in the field of judicial expertise; criminal liability for firearms offenses; procedure for ordering ballistic judicial expertise; regulatory framework in the field of civilian weapons.

Keywords: judicial expertise, ballistics, judicial expert, firearms, offenses, ammunition, law, criminal.

Introduction. Judicial ballistics expertise is a fundamental tool in the investigation of firearms offenses and in the criminal justice process. It helps to establish essential aspects such as identifying the weapons used, determining the trajectory of projectiles and analyzing the traces on bullets and cartridge casings. Another area in which ballistics knowledge is used is the civilian weapons and ammunition regime. In the Republic of Moldova, the activity of ballistics expertise is regulated by a complex regulatory framework, which ensures that it is carried out in accordance with the requirements of legality, objectivity and professionalism.

Among the main normative acts that establish the legal framework for ballistic judicial expertise is the Criminal Procedure Code of the Republic of Moldova, which sets out the conditions under which expertise, including ballistic expertise, may be ordered in criminal proceedings. An essential role in the organization and functioning of judicial expertise is played by Law No.68/2016 on judicial expertise and the status of the judicial expert, which regulates the status of the judicial expert, his/her rights and obligations as well as the requirements for the conduct of the expertise activity; Government Decision No.195 of 24.03.2017 on the approval of the nomenclature of judicial expertise; as well as Law No.130/2012 on the regime of weapons and ammunition for civilian use, which uses the knowledge of judicial ballistics to perform the control of legal weapons.

This article aims to analyze these regulations in detail, highlighting how the national regulatory framework contributes to ensuring effective ballistics judicial expertise in line

with international standards. The paper also highlights current challenges and possible directions for improvement of the legal framework to ensure an effective application of ballistic judicial expertise in justice. The article reviews the relevant national legislation, highlighting the legal and technical aspects governing the work of judicial ballistics experts.

Methods and materials applied. In the presented study, the normative framework was examined in a complex, objective and multi-aspectual way, by applying the following research methods: analysis, synthesis, comparison, deduction, induction, historical, systemic.

Discussions and results obtained. The national framework regulating judicial expertise includes the Law No.68 of April 14, 2016 on judicial expertise and the status of the judicial expert, which entered into force on December 10, 2016, the Criminal Procedure Code, the Civil Procedure Code and the Contravention Code.

Section 7 of the Criminal Proceedings Code, entitled Conduct of judicial expertise, contains regulations on the grounds for ordering and conducting judicial expertise (Article 142), the cases when the conduct of judicial expertise is mandatory (Article 143), the procedure for ordering the conduct of judicial expertise (Article 144), commission, complex, supplementary and repeated expertise. The legislator also refers to the carrying out of judicial expertise both inside and outside the judicial expertise institution. Article 151 contains provisions on the drafting and presentation of the report, its structure (introductory part, descriptive part and conclusions), what each part contains, and annexes to the report.

Analyzing the mentioned legal provisions, we note that according to para.(1) of Art.142 "expertise shall be ordered in cases where specialized knowledge in science, technique, art, craftsmanship or other fields is necessary for the ascertainment, clarification or evaluation of circumstances that may be of probative importance for the criminal case. The possession of such specialized knowledge by the person conducting the criminal prosecution or by the judge, does not exclude the need to order a judicial expertise" [1]. At the same time, Article 148 of the Civil Proceedings Code stipulates that "In order to elucidate aspects of science, art, technique, craftsmanship and other fields, arising in the trial, which require special knowledge, the court shall order an expertise to be conducted, at the request of the party or another participant in the trial, and in cases provided by law, ex officio" [2].

In this context, the doctrine also shares the same ideas, which are reflected in the legislation, or, according to the definition in the specialized literature, judicial ballistics is defined as a branch of forensic technique which, by using specific technical-scientific methods and means, deals with the forensic examination of firearms, ammunition, ammunition elements and traces created during the shooting, in order to identify the firearm and clarify the aspects related to the circumstances in which it was used in the commission of an act [3, p.12].

At the same time, in accordance with Article 143 of the Criminal Procedure Code, expertise is ordered and obligatory in cases related to persons and corpses (cause of death, bodily injuries, mental state, etc.), but also in other cases when the truth cannot be established by other evidence [1].

Analyzing the above, we can conclude that the criminal procedure does not expressly indicate that ballistics expertise is mandatory, but only when the truth cannot be established by other evidence. In cases in which illegal weapons manufactured industrial-

ly or handmade objects similar to weapons are found, the prosecuting authority needs the conclusion of a judicial ballistics expert to establish whether the weapons or objects are firearms, in working order and suitable for shooting. In situations related to legally owned firearms seized in the framework of criminal prosecution, let us admit for negligent keeping of firearms (Article 291 of the Criminal Code), there are no obvious circumstances that would make it obligatory or necessary to have a ballistics expert's report, or the individual legally owns the firearm on the basis of a firearms license. However, based on the practice of carrying out forensic ballistic examinations, there is a multitude of cases in which legally owned firearms have illicit modifications in their construction, either by changing the firing regime (from semi-automatic to automatic fire), or by modifying the barrels (shortening, threading, etc.), or other construction modifications provided for by Law No.130/2012 on the regime of arms and ammunition for civilian use, considered unlawful modifications to the construction of weapons. Also, within the framework of ballistic expertise of legal weapons, as a result of checking the ballistic collection of bullets and cartridge casings collected from undiscovered crimes, there is a possibility of establishing that a legal weapon was used in the commission of a crime.

Practical examples are judicial expertise reports carried out within the Forensic and Judicial Expertise Center of the General Inspectorate of Police. In the ballistic judicial expertise report No.R-2588 of 07.11.2023 the weapon seized during a search for a drug-related offense, as a result of the examinations it was found that it refers into the category of lethal firearms, it is a weapon handmade modified from a long riffled rimfired semi-automatic carbine, model "BROWNING SA 22", caliber 22LR (5.6x15mm), industrially manufactured at the 'Fabrique Nationale d'Herstal', or. Herstal, Belgium, by sawing the barrel to a length of 31.1mm.

In the judicial ballistic expertise report No.R-3713 of 17.12.2024 the weapon seized during a search for the crime of theft, as a result of examinations it was found that the weapon with obliterated serial numbers, seized during the search, refers to the category of lethal firearms, is a machine pistol handmade modified from machine pistol model "AKM", with a rifled barrel, caliber 7. 62x39mm, industrially manufactured in 1969 at the "Ижевский Механический Завод" plant, or. Ijevk, Russian Federation, by cutting the barrel up to 256mm in length, cutting the gas piston and bolt carrier up to 255mm in length, cutting the stock up to 10mm in length and adapting the barrel by threading the front-outer thread for the mounting of devices to reduce the noise of the shot during firing.

In the judicial ballistic expertise report No. R-3501 of 27.11.2024 the weapon seized during a search for the crime of hooliganism, as a result of the examinations it was found that the weapon with serial number "C 75491", seized during the search on 17.05. 2024, refers to the category of lethal firearms, is a handmade weapon, modified from a long firearm of the model "IJ-18-E" ("ИЖ-18-E"), with smooth bore, caliber 16x70, industrially manufactured at the "Ижевский Механический Завод" plant, or. Ijevsk, USSR (Russian Federation), by cutting the barrel to a length of 371mm and replacing the stock with a home-made pistol grip. The weapon is designed for firing 16x70 caliber ammunition.

Therefore, we think it is appropriate to analyze the criminal procedure regarding the mandatory order of ballistic expertise and to ascertain whether an object belongs to the category of firearms or ammunition, or to ascertain the presence of unlawful modifications to the construction of weapons.

In para.(1) of Art.146 CPC, it is stipulated that "The more complex or voluminous expert opinions shall be carried out by a commission of several experts of the same specialization or, where appropriate, of different specializations. At the request of the parties, experts invited (recommended) by the parties may be included in the commission of experts". Also, in para.(2) it is provided that "At the end of the investigations within the framework of the judicial expertise in commission, a single report of judicial expertise shall be drawn up and signed by all the experts of the commission" [1].

At the same time in Article 33 of Law No.68/2016 on judicial expertise and the status of the judicial expert, in para.(1) it is stipulated that "Judicial expertise in commission is the expertise carried out by judicial experts from the same or different fields of judicial expertise", and in para.(4) stipulates that "At the end of the investigations within the framework of the expertise in commission, a single expert report shall be drawn up and signed by all the experts who are members of the commission" [4].

Analyzing the provisions related to the expertise in commission, the deficiencies of the formulated rules are obvious, or on the one hand it is indicated that the report of the expertise in commission is signed by all the experts of the commission, and on the other hand it is indicated that in commission there can be experts from different domains, which is inadmissible, because the expert who does not have knowledge in a certain field cannot sign the part of the report in which the research was done for the given field. It is also worth mentioning that the Criminal Procedure Code uses the terms of "same specialization or, as the case may be, different specializations", and Law No.68/2016 uses the terms of "same domain or from different domains", which creates confusion regarding the judicial experts who can participate in the expertise in commission. However, they hold a judicial expert license with annexes in which the specialties in which he is licensed are written, in accordance with the nomenclature of judicial expertise approved by Government Decision No.195 of 24.03.2017. Additionally, we mention that the statement in the CPC "or, as the case may be, of different specializations" and the statement in Law 68/2016 "or from different domains" are inappropriate for the expertise in commission, or they are specific to complex expertise. And if necessary, a complex expertise in commission can be ordered, which may involve several forensic experts who have licenses in one specialty and several experts who have licenses in another judicial expertise specialty.

At the same time in para.(1) of Art.147 CPC, it is stipulated that "If the ascertainment of any circumstance that may have evidentiary importance in the criminal case is possible only after investigations in different fields, a complex judicial expertise shall be ordered", and in para.(2) it is provided that "Complex judicial expertise may be carried out either by a commission of experts qualified in different types of judicial expertise or by a single expert qualified in several types of judicial expertise" [1].

At the same time in Art.35 of Law 68/2016, para.(2) it is stipulated that "complex expertise may be performed either by a commission of experts qualified in different types of expertise, or by a single expert qualified in several types of expertise" [4].

We also note shortcomings in the provisions on complex expertise, or in para.(1) of the Criminal Procedure Code uses the terms "different domains", while in para.(2) the terms "different fields" are used. We emphasize that the nomenclature of judicial expertise approved by Government Decision No.195 of 24.03.2017 classifies judicial expertises into domains (e.g., Traditional Forensic, Chemical-Forensic, Forensic-Medical, etc.), which include in themselves one or more fields (e.g., Fingerprint Forensics, Ballistic Fo-

rensics, Material and Substance Forensics, etc), which in turn include one or more judicial specialties (e.g., Fingerprint, Palmprint and Footplant Examination; Crestoscopic Examination; Firearms and Ammunition Examination; Examination of Psychotropic Narcotic (Drugs) Substances and Precursors) [5]. This legislative deficiency creates shortcomings for both the ordering officer and the judicial expertise institutions at the stage of appointing judicial experts to carry out judicial expertise in commission or complex.

Even if in the case of ballistic expertise in the commission the situation is not so confusing, and the Ballistic Expertise genre includes only one specialty, Firearms and Ammunition Examination, in the case of other genres of expertise, for example Materials and Substances Expertise, with 15 different specialties of judicial expertise, the situation is much more complex and critical, or there could be cases when in the commission of experts carrying out the Examination of petroleum products and lubricants, the authorizing officer appoints experts holding a license in the specialty of Examination of narcotic substances (drugs) and psychotropic substances of vegetal origin, and both specialties are included in the field of Examination of materials and substances of the Chemical-forensic domain.

With reference to the Criminal Code, in Chapter XIII Offenses Against Public Security and Public Order, Article 290 exhaustively lists the offenses related to weapons, which constitute crimes, namely: illegal carrying, keeping, procuring, manufacturing, repairing, modification of construction or marking or illegal sale of weapons or ammunition, of essential components of weapons, as well as their theft [6].

In para.(1) penalties are foreseen for non-lethal weapons (prop weapons, airsoft replicas, pneumatic weapons, Flaubert weapons, gas, starter, signal weapons) and old weapons, but only for carrying, keeping or procuring them, and only for the purpose of transforming them into firearms, as well as for their transformation.

In para.(2) penalties are provided for weapons and ammunition prohibited in the civilian circuit or those subject to authorization, as well as for essential components of firearms. The actions listed here are more numerous and include, in addition to carrying, storing and procuring, the actions of manufacturing, repairing, altering the construction or marking, illegal sale, and for their theft.

The current amendments to Article 290 were made by the Parliament Act No.136 of 06.06.2024, in force 07.09.2024, with the purpose of correlating the given article with the provisions of Law No.130/2012 on the regime of weapons and ammunition for civilian use, which contains the definitions for the concepts used in the Criminal Code (illicit manufacturing of firearms, illicit modification of the construction of weapons or of the marking, essential firearm component), as well as definitions and classifications of different types of weapons and ammunition (weapon, firearm, ammunition, prohibited weapons and ammunition, lethal weapon and ammunition, non-lethal weapon and ammunition, prop weapon, antique weapon, gas weapon, etc) [7].

It is obvious that in order to legally categorize an illegal act, it is mandatory to order a judicial ballistic expertise to determine whether an object constitutes a weapon, what kind of weapon it is (non-lethal, lethal, pneumatic, gas, firearms, etc.), how it was manufactured (industrial or handmade), whether it is in working order or not and whether there are any changes in the construction or marking.

As for the use of judicial ballistics in the control of weapons in the civilian circuit, the modality is also provided for in Law No.130/2012, but the law does not use the expression

"forensic ballistic expertise", but "technical-scientific ballistic report" [3]. The reason is obvious, as judicial expertise is carried out in the framework of a judicial process (civil, contravention or penal), and the Law 130/2012 regulates the categories of weapons and ammunition for civilian use, as well as the conditions under which the procurement, alienation, possession, carrying, use of these weapons and ammunition and operations with them are allowed on the territory of the Republic of Moldova [7].

In para.(3) of Art.3 of Law No.130/2012 stipulates that the Ministry of Internal Affairs is the competent authority that carries out the technical-scientific ballistic report, periodic technical examination, traceability marking, test firing of weapons with the inclusion of cartridge casings and fired bullets in the collection of cartridge casings and fired bullets of the Ministry of Internal Affairs, systematized by type, make, model, caliber, series, number, by year of production and by batch.

In para.(4) of Art.511 it is provided that the traceability marking of weapons provided for in paras.(1), (2) and (3) shall be carried out by the central police body authorized to carry out ballistic examinations.

In para.(2) of Art.67 it is stipulated that unsuitable for use are considered to be weapons with falsified, destroyed, removed or modified markings, which after ballistic examination, if they do not constitute corpus delicti, shall be sent to the State Commission for the evaluation, bonification and destruction of weapons for their cassation.

In para.(4) of Art.68 stipulates that the deactivation of a firearm by modifying and irreversibly transforming it into a permanently non-functional one is attested by a technical-scientific ballistic report issued by the authorized service of the Ministry of Internal Affairs, which serves as a basis for its removal from the register.

Therefore, we can conclude that the knowledge of judicial ballistics is used in the control of weapons from the civilian circulation, to determine the operational condition of weapons, to certify that a weapon is permanently deactivated, and legal weapons can be removed from the civilian sector and transferred to the State Commission only after a ballistic examination. It is also important to mention the process of test firing from rifled weapons and the inclusion of cartridge cases and bullets in the Ministry of Internal Affairs' Collection, which is used in judicial ballistic expertises for the detection and prevention of crimes.

Regarding the Contravention Code, Article 390 stipulates in paragraph (1) that "the judicial expertise is carried out by the judicial expert registered in the State Register of Judicial Experts" [8]. In paragraph (21), it is provided that "the expert, in the contravention process, has the rights and obligations set out in Article 88 of the Criminal Proceeding Code, applied accordingly, as well as other rights and obligations provided by this Code". Simultaneously, according to paragraph (1) of Article 142 of the Criminal Proceeding Code, "the ordering of judicial expertise is made, at the request of the parties, by the criminal prosecution body, prosecutor, or by the court, as well as ex-officio by the criminal prosecution body or the prosecutor". Examining these provisions, it is noteworthy that, on the one hand, the procedure for appointing the expert to carry out the judicial expertise is indicated, while on the other hand, the constating agent is not indicated as an authority that can order the performance of a judicial expertise.

Conclusions. In conclusion, we mention that, although the legislative framework regarding judicial expertise provides a detailed and complex system for carrying out judicial expertise, including in the field of judicial ballistics, there are deficiencies in the

regulations concerning complex expertises and those carried out by a commission. Additionally, the recent changes in legislation, especially regarding the Criminal Code and legislation related to firearms in the civilian sector, highlight the need for judicial ballistic expertise to determine the operational condition, suitability for firing, and the presence of modifications in their construction. It is also evident that there is a gap in the rights of the constating agent to order a judicial expertise.

Thus, for a better clarification and optimization of the judicial expertise process, we consider it imperative to amend the Criminal Proceeding Code and Law No.68/2016 regarding commission and complex expertises, so that the term specialties of judicial expertise to be used, as well as to clarify the distinction between commission expertises, which are carried out by experts in the same specialty, and complex expertises, which are carried out in different specialties, either by a single expert holding licenses in the necessary specialties or by multiple experts holding licenses in different specialties of judicial expertise. It is also evident that there is a need to amend the Criminal Proceeding Code to provide the constating agent with the possibility to exploit the institution of judicial expertise in the investigation of contraventions.

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THE PARTICIPATION OF SPECIALISTS IN CARRYING OUT BODY SEARCH IN CRIMINAL PROCEEDINGS

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Summary

Currently, in connection with significant changes in the procedural regime for conducting a body search, the subject of procedural regulation of the involvement of specialists in this criminal prosecution action attracts the attention of researchers and practitioners. The relevance of the research topic is determined by a number of features of the procedure for conducting a body search, which, in turn, are determined by the specific object in relation to which this criminal prosecution action is carried out - the body of a living person. During the body search, an intrusion into the sphere of personal rights and freedoms of the citizen occurs, including the right to physical inviolability.

In practice, when conducting a body search, a whole complex of problems is identified, related, among other things, to the application of criminal procedural norms regarding the participation of specialists in this criminal prosecution action. In this context, an additional and thorough analysis of the regulation and possibilities of using the knowledge of specialists participating in the body search is necessary. These issues require detailed scientific research. The analysis of the theoretical material on the participation of specialists in carrying out body search allows arguing that an improvement of theoretical approaches in this field is necessary.

Keywords: body search, criminal prosecution action, suspect, accused, injured party, witness, expert examination, specialized knowledge, particular signs, traces.

Introduction. The knowledge available to criminal prosecution bodies is not always sufficient for the discovery and use of certain evidence, and the reporting and interpretation of important facts for the case, which is why it is necessary involving competent persons from different fields of human life in the criminal prosecution activity [3, p.466]. By 'specialized knowledge' is meant a system of professional theoretical knowledge and practical skills in a specific field of science, technology, art or profession, acquired through special training and professional experience [4, p.690]. The application of specialized knowledge is characterized by the emergence, development and termination of a system of complex legal relations both between the subjects of specialized research and between the persons whose interests are affected (suspect, accused, defendant, injured party, etc.) [1, p.190].

The notion of 'specialist' is regulated in the criminal procedure law. The procedural status of the specialist is also regulated here, while the notion of 'physician' and his/her procedural status are not explained. Given that the legislator speaks about the possibility of involving 'a physician or other specialist' in performing the body search, it can be concluded that the physician is considered by the legislator as a specialist. Several researchers in the field of criminal procedure, analyzing the procedure for conducting a body search, consider the physician as a specialist. For example, V.K. Lisichenko notes

that "body search, performed exclusively by a physician, is an auxiliary form of applying specialized knowledge in criminal prosecution actions, and the physician's activity is a specific form of mandatory participation of the specialist in body search" [20, p.16].

The author N.A. Marks uses the term 'specialist' as equivalent to the term 'physician'. In Article 119 of the Criminal Procedure Code of the Republic of Moldova [2] (unlike other articles where the term 'specialist' appears) the profession of the person whose specialized knowledge can be used in the body search is directly indicated. The identification of the function of a physician with that of a specialist is based on their same procedural position, since the main characteristic of a specialist is the possession of specific knowledge in the field of science, technology and other fields [21, p.41].

Researcher Iu.G. Torbin notes that, in the case of the participation of a specialist other than a physician in the body search, the procedural status of the invited specialists is also regulated by other criminal procedural norms (*in the case of the Criminal Procedure Code of the Republic of Moldova, by Article 87 – n.n.*). That is, literally, Iu.G. Torbin distinguishes between the procedural figures of the specialist and the physician [28, p.128]. It seems that this point of view is not entirely correct. However, physicians, in this case, act as specialists in the criminal procedural sense and the provisions of Article 87 of the Criminal Procedure Code of the Republic of Moldova apply to them, but, at the same time, the law defines the nature and content of the specialized knowledge possessed by this person – special medical knowledge.

In this context, from our point of view, it is necessary clarifying certain terminological issues. In the opinion of V.N. Makhov, the foundations were laid for "three interconnected forms of using specialized knowledge, which represent the core of the institution of specialists in the criminal trial: 1) participation of specialists in criminal prosecution actions; 2) judicial expert examination; 3) interrogation of specialists" [22, p.24].

The author M. Gheorghita argues that in criminal prosecution and judicial practice specialized knowledge is used in three forms: 1) participation of the specialist in carrying out procedural actions; 2) technical-scientific or forensic findings; 3) carrying out judicial expert examination [4, p.691].

In the theory of criminal procedure law there is no unified opinion on the designation of subjects possessing specialized knowledge – specialists or competent persons. Substitution (replacement) of the concept, in this case, as V.N. Makhov emphasizes, has not only a theoretical, but also a practical significance; it leads to an incorrect perception of the status of competent persons and specialists and the relationship (correlation) between them [22, p.51]. In a broad, everyday sense, all persons possessing specialized knowledge can be called specialists. However, the term 'specialist' is regulated in the legislation in relation to persons possessing specialized knowledge and who are involved in criminal prosecution and judicial actions. The law defines a specialist as a person who possesses specialized knowledge and is involved in procedural actions in accordance with the procedure set by the Criminal Procedure Code, to assist in the discovery, recording and collecting of objects and documents, the application of technical means in the investigation of criminal cases, the formulation of questions for the expert, as well as for the clarification (explanation) to the parties and the court of questions within their competence.

Thus, the law establishes that the professional competence of a specialist includes the knowledge and skills to apply technical means for the discovery, recording and collecting of objects and documents, as well as the knowledge necessary for the investiga-

tion of the materials of the criminal case with the guidance of representatives of the criminal prosecution bodies, for the formulation of questions addressed to the expert in the event of ordering a judicial expert examination, as well as for the resolution of questions that the parties to the criminal trial and the court have, questions that require specialized knowledge [26, pp.188-189].

The law gives the specialist two main features. A specialist, like an expert, is, on the one hand, a person who possesses specialized knowledge in various fields (except for legal ones); on the other hand, a specialist should not be interested in the outcome of the criminal case [17, p.81]. Specialized knowledge is recognized as knowledge obtained by certain subjects in the process of practical activity through special training or professional experience they possess, based on a system of knowledge in the respective field [1, p.183]. Specialized knowledge, which is mentioned in the Criminal Procedure Code [2], is knowledge specific to various types of professional activities, except for those that are professional for representatives of criminal prosecution bodies and judges, used in the investigation of crimes and in the examination of criminal cases in court, in the cases and in the order established by law. Knowledge in the field of forensics is considered professional knowledge of representatives of criminal prosecution bodies. However, it is important to note that, in the field of specialized knowledge of forensic specialists, representatives of criminal prosecution bodies need knowledge that would provide them with an understanding of the possibilities of forensic scientists involved in criminal prosecution actions, as well as the knowledge necessary for the correct assessment of the conclusions of forensic expert examinations. The specialist must not only possess specialized knowledge, but also have skills in applying them [23, p.149].

Methods and materials applied. The methodological basis of the research is the general method (dialectical method of scientific knowledge), general and particular scientific methods: the method of analysis and synthesis, the systematic-structural, formal-legal, comparative-legal method, etc. The scientific article uses works in the field of criminal procedure law, forensic science and judicial expert examination. The normative basis of the research is the norms of criminal procedural legislation and normative acts regulating the possibilities of using the knowledge of specialists involved in conducting a body search. As for the peculiarities of the participation of specialists in conducting a body search, special attention was paid to the analysis of the criminal procedural and tactical-forensic aspects of this activity.

Discussions and results obtained. The specialist may be a person who is not interested in the case. Previous participation in the case as a specialist is not a reason to reject his/her participation (recusation). As for the regulation of the physician's activity during the body search, the Criminal Procedure Code of the Republic of Moldova [2] (Article 119, para.(3) and (4)) only establishes that the physician either participates in the examination in case of necessity, if invited by the representative of the criminal prosecution body, or carries out the body search, if it involves the undressing of the body of a person of a different sex from that of the representative of the criminal prosecution body. The author Iu.G. Torbin, characterizing the physician's activity during the body search, emphasizes that he/she uses medical knowledge for the purpose of discovering, recording and collecting particular signs, traces of the crime, bodily injuries, properties and features that are relevant to the criminal case [28, p.128].

As indicated by L.V. Vinitsky, and we fully agree with him in this regard, in the case of

a body search carried out only by a specialist, which involves the undressing of the body of a person of a different sex from that of the representative of the criminal prosecution body, it is necessary to thoroughly and in detail regulate the activity of the specialist [13, p.30]. In legislative acts, the term 'physician' is frequently used, and some authors mention that by 'physician', referred to in paragraphs (3) and (4) of Article 119 of the Criminal Procedure Code of the Republic of Moldova, the legislator understands a person who holds a certain position within medical institutions and, accordingly, has the legal status of a physician [27, p.455]. At the same time, it should be noted that, along with the term 'physician', the terms 'medical worker' or 'specialist physician' are also used. A physician is a person who carries out medical activity.

The right to practice medicine is granted to persons who have obtained higher or secondary medical education, who hold a diploma and a special title, as well as a specialist certificate and a license to practice medicine. A specialist certificate is issued on the basis of postgraduate professional education (PhD, residency), additional education (professional development, specialization) or a verification exam organized by the commissions of professional medical associations, in the field of theory and practice of the chosen specialty, as well as legislation on the protection of citizens' health.

Thus, a physician is a position, but not a procedural status of a person. The use of the term 'physician'" in the framework of Article 119 of the CPC [2] is not entirely correct, since, from a procedural point of view, a physician, as mentioned above, is a specialist. However, medical science is called upon to support and guide the act of justice where the training and knowledge of legal sciences, by themselves, cannot solve the problems facing it [5, p.21]. Each physician has a distinct specialty. For example, for the position of sector therapist, specialists with higher medical education in the specialties of 'General Medicine' or 'Pediatrics' and a specialist certificate in 'Therapy' are designated. In the course of performing the body search, usually not just any specialist is involved, but a specialist in the field of legal medicine. The position of a specialist in legal medicine corresponds to the specialty of 'Forensic Expert Examination'. As a specialty bordering on social and legal sciences, legal medicine has the task of correctly advancing the legislative incrimination of certain types of crimes [12, p.3]. The legislator in Art.119 CPC of the Republic of Moldova, established that, if necessary the representative of the criminal prosecution body may involve a physician or other specialist in conducting the body search. In connection with this, the question arises: can 'another specialist' be involved alongside the physician in the body search; or, if we interpret this norm literally, did the legislator consider that only one specialist can be involved in the body search: either the physician or 'another one'? What 'other' specialties can be involved in conducting the body search? L.V. Vinitsky emphasized that, in addition to the physician, another specialist such as a forensic scientist can also participate in the body search. Moreover, "depending on the type of expert examination to be carried out subsequently, in case of discovery of traces on the body or clothes, it would be rational to invite other specialists to participate" [13, p.29]. L.M. Isaeva indicates that, depending on the circumstances of the case and the nature of the crime, different specialists may be required – biologists, chemists, forensic scientists, etc. "For example, a forensic specialist may be involved when he/she is entrusted with taking photographs, video recordings, as well as in cases where the discovery of traces, their search and recovery require special forensic knowledge. For example, the search for micro-objects, fibers, hairs, etc., which confirm contact with the victim (in cases of rape,

serious bodily harm, murder); soil, paint, plant pollen, fibers, which indicate the presence of a person at the scene of the crime; weapon lubricants, gunpowder particles, explosive substances, drugs, which indicate the conduct of actions related to the crime. In certain cases, other specialists like biologists, chemists, ballisticians, etc., may be invited to perform similar work" [17, p. 47]. Iu.G. Torbin emphasizes that "in some cases, it is very appropriate to decide on inviting not one specialist, but several specialists – representatives of different fields of science and technology" [28, p.131].

Moreover, the possibility of involving another specialist besides the physician in the body search involving the undressing of the body of a person of a different sex from that of the representative of the criminal prosecution body is not clearly regulated. In connection with this provision, A.V. Kudryavtseva mentions that "another specialist can only be a person of the same sex as the person being examined, but it is desirable that such an examination be carried out only by the physician" [18, p.248]. Regarding this possibility at the stage of criminal prosecution, some authors consider that, in such circumstances, if the representative of the criminal prosecution body cannot be present, and the body search is carried out by the physician, the forensic specialist cannot be present either [17, p.147].

Given that the law does not stipulate conditions regarding the sex of the physician who may be involved in conducting a body search involving the undressing of the body of a person of a different sex than that of the representative of the criminal prosecution body, the question arises about the need of introducing such a condition. The introduction of such an examination rule is related to the fact that the person being examined may have a feeling of embarrassment associated with the undressing of the body. As indicated by A.V. Kudryavtseva, this feeling is mitigated "in the presence of a person whose profession is medicine, minimizing the psychological discomfort of the person being examined" [18, p.248]. In practice, in the case of a body search involving the undressing of the body, priority is given to a specialist of the same sex as the person being examined. It is also necessary analyzing the issue of the conditions for the application of specialized knowledge by the representative of the criminal prosecution body during the body search: in which cases should he or she seek the help of a specialist, and in which cases is his/her own knowledge sufficient? The use of specialized knowledge during the body search can be both mandatory and optional. The Criminal Procedure Code of the Republic of Moldova [2] (Article 119, para. (3) and (4)) provides for the mandatory involvement of a medical specialist only when the body search involves the undressing of the body of a person of a different sex, otherwise, the need for the specialist's involvement is determined by the representative of the criminal prosecution body. However, the situation seems to be more complex, and setting the mandatory involvement of the specialist only on the basis of moral and ethical aspects is not entirely correct [26, pp.196-197].

In the legal literature, the forms of use of specialized knowledge are frequently classified depending on the subject applying them, namely: the application of specialized knowledge by the persons conducting the criminal procedure (representative of the criminal prosecution body, prosecutor, judge), the specialist and the expert [15, pp.112-113]. A.M. Goldman noted that although usually for the investigation of the circumstances to be proven in criminal cases, related to the use of specialized knowledge necessary for the study of facts and phenomena of the material world, which helps establishing the truth, competent persons trained in the relevant fields are involved, this knowledge can also be possessed by employees of judicial and criminal prosecution bodies [14, p.27].

However, in theory, certain conditions are established under which the representatives of the criminal prosecution body can apply own specialized knowledge. In particular, A.M. Goldman believes that the subjects of evidence have the right to apply specialized knowledge themselves when the properties and characteristics of the identified objects are obvious, do not require a specialized assessment and do not imply interpretation by persons with specialized knowledge [14, p.33]. Yu.D. Livshits and A.V. Kudryavtseva indicate that the representative of the criminal prosecution body may possess certain forensic knowledge and apply it in the framework of criminal prosecution actions, but their use in the framework of criminal prosecution action is permitted only under two conditions. First, the result of the application of specialized knowledge must be not a conclusion, but an objective fact, perceived visually, for example, a trace that cannot be seen without special processing with the help of chemicals or other means. Second, the established fact must be accessible to the public, represent an obvious result of the research carried out for all participants in the criminal prosecution action who do not possess specialized knowledge, including witnesses [19, pp.8-9]. A similar opinion is expressed by Yu.K. Orlov regarding the use of specialized knowledge in the framework of criminal prosecution actions [25, p.8]. V.N. Makhov believes that the use of forensic knowledge by the representative of the criminal prosecution body without the help of a specialist is possible only under the following conditions: "1) when he/she masters this knowledge for sure, without the risk of destroying or damaging the traces of the crime; 2) when this does not involve excessive distraction of his/her attention from the performance of his/her direct functions, where he/she is indispensable" [22, p.48]. N.A. Marks indicates that one of the most widespread and effective method used during the body search is identification. In some cases, this is carried out directly by the representative of the criminal prosecution body, and in others, special scientific and technical methods are required, as well as the involvement of specialists [21, p.39], in order to ascertain any states or changes, produced directly or indirectly, by an action, if they turn out to be somehow related to the investigated act [6, p.6].

The specialist is involved in body search "when it is necessary to have a clear picture of the structure of the object to be identified and the laws of its reflection in traces, when professional knowledge of the methodologies for discovering and collecting material evidence and the use of scientific and technical means is required". The identification actions of the representative of the criminal prosecution body during the body search consist in the application of specialized knowledge directly in order to establish the identity of material objects on the basis of factual data obtained by examining the body of the persons and recorded in the procedural sources (for example, the statements of the party about the presence of a scar on the suspect's face, which are subsequently confirmed by examination and recorded in the minutes of this criminal prosecution action). The representative of the criminal prosecution body can use own specialized knowledge during the body search and to create a basis for subsequent identification research in the framework of forensic examinations (for example, during the examination of the suspect's body, traces of blood, particles of lime or paint are discovered, which must be removed and which will constitute objects of research for subsequent forensic examination). The author N.A. Marks concludes that "in some cases, when the representative of the criminal prosecution body solves identification issues by conducting a body search, special regulation is not required" [21, pp.39-40].

Apparently, it is necessary establishing stricter limits for the participation of the specialist in the body search. Undoubtedly, agreeing with the fact that in the case of the use of specialized knowledge by the representative of the criminal prosecution body during the body search, the result of their application should be an objective fact, and not a conclusion, we must limit the establishment of visually perceived facts to the framework of visual observation. If the "objective, visually perceived fact" is not visible "without special processing by chemical or other means", then a specialist must be invited. This limitation is connected with the special object of the body search - the body of a living person, as well as the complexity of the actions aimed at discovering and recording, and especially at collecting traces [28, p.134].

Despite the optional nature of the participation of a specialist in the body search, a number of researchers emphasize that in the process of body search, in order to discover, record and collect distinctive signs, traces of the crime or bodily injuries, the need to use specialized knowledge often arises. The author Yu.G. Torbin emphasizes the advisability of the participation of a specialist in the body search. The appropriateness of participation, "especially of a physician, is determined by the specificity of the object of examination, the diversity of material manifestations that can be located on the body of a living person, the objective difficulties in discovering, recording and collecting them, as well as certain moral and ethical considerations [28, p.127]. L.V. Vinitsky indicates that, in a situation where persons subjected to body search may offer physical resistance, it is necessary establishing the mandatory presence of a physician, regardless of whether the examination will involve the undressing of the person's body or not [13, p.27].

We must also remember that body search, as a criminal prosecution action, should not be confused with forensic medical examination. The first is a form of judicial investigation, and the second is a type of forensic medical expert examination [8, p.879]. We also believe that the mandatory participation of a specialist in forensic medicine should be established or, in the case of where this is not possible, of another physician, during the body search, because: firstly, in the case of a body search of a person, his/her position may change during the examination, i.e. initially the person agreed with the examination, and later changed the opinion and no longer agrees; secondly, this would allow guaranteeing an acceptable limitation of the personal inviolability of persons subjected to body search, since the specialist can determine the nature of actions that could pose a danger to the health of a living person and which are prohibited by law; thirdly, this will create, in many cases, an atmosphere of psychological comfort for persons subjected to body search. It is also appropriate to agree with the opinion of Yu.G. Torbin according to which in the case of body search of minors, the presence of a physician should be considered mandatory [28, p.131] for the purpose of providing the necessary assistance to the body carrying out the criminal prosecution action, creating a fair and safe environment for carrying out the criminal prosecution action [9, p.112].

Regarding the procedural activity of the specialist during the body search, the following should be noted: the direct participation of the specialist is characterized as an activity that is an integral part of the criminal prosecution action, being a procedural and tactical means of it, and is expressed in the preparation for the conduct of a specific criminal prosecution action, through actual involvement in the respective action and through the subsequent technical processing of its results [24, p.23]. The specialist may participate in the preparation for the body search. Thus, many authors emphasize that the per-

son conducting the criminal prosecution action may consult the specialist regarding the place where the body search will take place, as well as the conditions that must be met for it to be carried out correctly [13, p.31; 19, p.69]. The forensic specialist must be informed in advance about the tasks of the body search. This provides the opportunity to select the necessary equipment, packaging materials, as well as to conduct a self-assessment of own qualifications by the specialist [17, p.147]. L.V. Vinitsky, analyzing the problems of preparation for the body search, emphasizes that "since the examination, accompanied by the undressing of the body of the examined person, can be carried out not only by a specialist in forensic medicine, but also by a physician with another specialization, it is important to train him/her in forensic methods of detecting and collecting various traces..." [13, p.31].

During the body search, the specialist performs a number of actions: "discovers traces of the crime and characteristic features; records these traces to attach them to the report (photographs, draws, records them on video); assists the representative of the criminal prosecution body in describing the characteristic features and bodily injuries in the minutes of the criminal prosecution action; picks up and packs traces and other discovered objects; selects samples for comparative research and other objects of biological origin for comparative research; determines how the bodily injuries were caused and their sequence; identifies traces related to the investigated event; conducts preliminary research on objects; provides assistance in formulating versions" [13, p.39; 19, p.69].

Some problems arise in connection with the process of procedural documentation of the results of a body search, which is accompanied by the undressing of a person of the opposite sex to that of the representative of the criminal prosecution body and carried out by a physician. In the forensic literature, there are various opinions on the peculiarities of the body search of a person of the opposite sex, which involves the undressing of that person and is carried out by a physician. Some authors believe that the physician, as a person who directly performs this action, should perform the function of a person conducting the criminal prosecution action during this activity. For example, G.I. Gramovich considered that, given that the representative of the criminal prosecution body does not directly observe the facts and does not document them, the physician, in this case, does not play the role of a specialist or expert, but acts as a person performing a criminal prosecution action instead of the representative of the criminal prosecution body [16, p.72].

Other authors emphasize that, although in these conditions the direct examination is not carried out by the representative of the criminal prosecution body, he/she still retains the leadership role. The author N.A. Marks mentions that the main features of conducting a body search exclusively by a physician are the following: he/she receives certain powers to essentially perform procedural actions that would be performed by the representative of the criminal prosecution body, which must be mentioned in the order for conducting the body search; the physician performs the body search independently, not because of the lack of specialized knowledge of the representative of the criminal prosecution body, but for ethical reasons; the physician has the freedom to choose the means, methods and techniques to perform the same tasks that the representative of the criminal prosecution body would solve [21, p.39]. Yu.G. Torbin emphasizes that, despite the involvement of the specialist in the process of examining the body or clothing of the person undergoing examination, the representative of the criminal prosecution body remains the main responsible and executor of this criminal prosecution action. He sets the specialist specific tasks, such as discovering, recording and collecting traces of the crime

and other evidentiary information, sets the task of preliminary investigation of the discovered traces. In addition, it is the representative of the criminal prosecution body who assesses the results, quality and veracity of the actions performed by the specialist [28, p.132].

In the process of conducting a body search, it is important to clearly distribute responsibilities between the representative of the criminal prosecution body and the specialist, and the representative of the criminal prosecution body retains the leading role even in cases where the examination involves the undressing of the body of the person being examined and when the action is performed by a physician. At the present stage, a stable opinion has been formed in theory that, when the body search is carried out exclusively by a physician, the representative of the criminal prosecution body performs procedural functions: issues an order for the body search, selects participants in the criminal prosecution action (including the physician), informs them of their rights and obligations, establishes the tasks for the body search of the person and draws up the report. The physician performs only discovery actions, at the request of the representative of the criminal prosecution body: conducts a body search, identifies traces, injuries and distinctive signs, etc. [13, p.26]. Drawing up a report on the body search is within the competence of the representative of the criminal prosecution body even when he personally did not examine the body of the person under investigation, but delegated this task to the physician [28, p.132].

A separate area of activity of the specialist is the taking of photographs and video recordings. During the body search, according to the criminal procedure legislation, it is possible using photography and video recording to document the conduct and results of the criminal prosecution action. Forensic photography significantly facilitates the efficiency of the investigation, accelerating and facilitating the process of identifying the perpetrators [10, p.201]. For the documentation of the body search which is not distinguished by special dynamics and its results, it is recommended to limit ourselves to taking photographs. In this regard, it is suggested as a recommendation to record the key moments of the action, as well as the traces found on the body, which are related to the crime, distinctive signs, tattoos, etc.

Video recording is applied when it is necessary documenting the entire process of the body search, and not just its key moments. This is carried out according to traditional rules, considering the above-mentioned peculiarities. The use of video recording is welcome when the body search is related to the application of coercion. Documenting the body search process with the help of video recording guarantees the possibility of subsequent control over the way in which it was carried out [17, p.148]. Due to the fact that video recordings are able to reproduce the facts in all their complexity and dynamism, they will constitute an excellent means of verifying all other means of evidence and an element that the suspect, the accused will very difficultly decide to contest – in case it proves his/her guilt [7, p.62; 11, p.147]. Filming the examined person during the undressing is carried out only with the consent of the person in question. The fact of using technical means for the purpose of discovering, recording and collecting traces of the crime, identifying and recording distinctive signs, body injuries, other characteristics and signs relevant to the criminal case is reflected in the minutes of the body search.

A translator may also be invited to the body search when the person involved in the case does not sufficiently know the language in which the trial is being conducted.

Such persons may be the suspect, the accused, the injured party, the witness, and others. Through the translator, the right of this person to testify and explain, to make requests, to file complaints, to familiarize with the materials of the case file, to participate in the court hearings using the native language or any other language the person knows [26, p.206].

A person who does not know or knows insufficiently the language in which the trial is being conducted has the right to benefit from the services of a translator free of charge, in accordance with the procedures established by the Criminal Procedure Code. The participation of the translator in the body search is reflected in the minutes of the criminal prosecution action, which are signed by the person after becoming aware of its content.

Conclusions. The body search performed by a physician should not be considered a forensic medical examination. Both the body search and the forensic medical examination of living persons have a common object – the body of a living person. However, the forensic medical examination of living persons and the body search are different in their content and the procedural order in which they are performed. The tasks, subjects, procedural grounds, terms and place of these criminal prosecution actions are also different. In this context, carrying out a body search should not replace the investigations performed with the help of judicial expert examination.

If necessary, the representative of the criminal prosecution body may involve in the body search specialists from various fields. Several specialists of different specializations may also participate in the body search. It is justified and correct that the criminal procedure law provides for the involvement of a physician specializing in forensic medicine in performing the body search, and only in the event of his/her inability to participate, another physician.

We believe that the mandatory participation of a specialist in the field of forensic medicine in the body search or, in case of impossibility of his/her participation, of a general practitioner should also be regulated, for the following reasons: 1) First, in the case of a body search of a person, his/her position may change over time, that is, initially the person may agree with the examination being carried out, and later may change own opinion, expressing the disagreement in this regard; 2) Second, this will guarantee the acceptable limitation of the personal inviolability of the examined persons, since the specialist can determine the nature of the actions that could pose a danger to the health of the living person and the conduct of which is prohibited by law; 3) Third, this will create, in many cases, an atmosphere of psychological comfort for the persons subjected to body search.

Also, as a matter of ***lex ferenda***, we propose:

1) Amending paragraph (3) of Article 119 of the Criminal Procedure Code of the Republic of Moldova, which shall be set out in the following wording: "*The body search shall be carried out by the representative of the criminal prosecution body with the participation of a specialist in forensic medicine, and in case of impossibility of his participation, with the participation of another physician. If necessary, other specialists may be involved in carrying out the body search.*"

2) Supplementing Art.119 of the Criminal Procedure Code of the Republic of Moldova, in order to ensure the veracity of the body search minutes, with para.(41) with the following content: "*In case of carrying out the body search by a physician, the report of the criminal prosecution action shall be drawn up by the representative of the criminal prosecution body*".

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DESIDERATES OF EXERCISING THE FUNCTION OF DEFENDING THE VICTIM AND THE INJURED PARTY IN THE CASE OF INVESTIGATING SEXUAL CRIMES

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Summary

The mechanisms for ensuring the rights of victims and injured parties in cases of sexual crimes need to be improved. In order to increase the protection of victims of sexual crimes, several measures are needed: establishing a form of legal assistance guaranteed by the state, ensuring psychological and medical counseling that ensures not only physical but also psycho-social recovery, strengthening the mechanisms for ensuring the right to privacy and protection of personal image, hearing victims in friendly conditions, establishing clear criteria for additional hearings of victims, avoiding (unnecessary) confrontations between the victim and the perpetrator during the examination of the respective crimes.

Keywords: criminal trial, right to defense, sexual crimes, victim.

Introduction. One of the central themes of the contemporary world is the issue of human rights, especially the right to defense, of several participants in a criminal trial, especially the victim and the injured party. It should be noted that the protection of fundamental human rights and freedoms is an indisputable task of the state, and in order to ensure the defense of these rights, the state has created a vast system of surveillance and control measures, legal defense and procedural protection. Thus, criminal law is intended to ensure the legal framework appropriate to the defense of fundamental social values. The fundamental rights and freedoms of the individual include those concerning sexual freedom, that is, the possibility of the person, regardless of sex, to decide for himself regarding his sexual life, without fear of being prevented from exercising it. In the study, we aimed to investigate both the substantive legislative framework, which criminalizes sexual crimes, and the procedural legislative framework, which guarantees the rights of victims and injured parties throughout the process of investigating this category of crimes.

Methods and materials applied. The methodological basis of the research is represented by the general scientific provisions of logic, the general theory of state and law, the theory of criminal law and criminal procedural law. As general and particular scientific research methods, the following were applied: logical method, systemic method, analyt-

ical method, as well as other methods of knowledge and interpretation. The theoretical basis of the study is formed by multiple scientific works in the field of criminal procedural law and criminal law.

In the process of developing this article, we were guided by several normative acts, such as the provisions of the Constitution of the Republic of Moldova, the Criminal Code, the Criminal Procedure Code, etc., as well as provisions of international regulations in the field.

Discussions and results obtained. Ab initio, in accordance with the provisions of Art.1 paragraph (2) of the Criminal Procedure Code of the Republic of Moldova, "criminal proceedings aim to protect the individual, society and the state from crimes, as well as to protect the individual and society from illegal acts of persons with responsible positions 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 his guilt and no innocent person is held criminally liable and convicted" [1]. The issue of respecting and defending human rights has become increasingly important over time, leading to either the repeal or amendment of existing legal provisions that contravened the imposed requirements, or the adoption of new provisions, in accordance with the international commitments assumed. We reiterate, for example, the extensive amendments and additions made in recent years to the Criminal Code and the Criminal Procedure Code of the Republic of Moldova. Some of the innovations were brought to the Criminal Code by the draft Law on amending certain normative acts (ensuring the rights of victims in cases of crimes related to sexual life and domestic violence) No.321 of 22.07.2022 (voted as Law No.316 of 17.11.2022) [2], or, with reference to paragraph (1) of Art.132^2 of the Criminal Code (non-consensual sexual acts or actions of a sexual nature), from the projected provision of this norm it follows that a sexual act is considered to be the action of vaginal, anal or oral penetration of a sexual nature with any body part or object. A similar formulation is used in Art.152 (Rape) of the Criminal Code of Ukraine [3].

With specific reference to the right of defense of the victim and the injured party in the case of sexual crimes, first of all, it is important to note that, by sexual acts are understood all possible ways of obtaining sexual satisfaction – other than the act of vaginal, anal or oral penetration of a sexual nature of the body of another person with any body part or object – would be classified as sexual acts. When resolving criminal cases that are part of the category of crimes regarding sexual life indicated in articles 171 (Rape), 172 (Violent acts of a sexual nature), 173 (Sexual harassment), 175^1 (Seduction of a minor for sexual purposes) of the Criminal Code [4], the courts will take into account that for the purposes of the criminal law, the interpretation of the following notions is important: sexual intercourse represents a normal sexual act (in physiological terms) between persons of different sexes; Homosexuality represents the sexual act between people of the same sexual affiliation; satisfying sexual desire in perverse forms represents the practice of unnatural sexual acts, which aim to satisfy the sexual instinct through different procedures (anal-genital, oral-genital, oral-anal), between people of different sexual affiliation [5].

In the same register of ideas, the sexual life of a person represents, in accordance with the decisions of the European Court of Human Rights, "an intimate aspect of private life", recognizing the right of each person to have a sexual life of his choice, in accordance with his profound identity. Another definition of crimes concerning sexual life is offered by the Russian author Ia. Iakovlev, who specifies the following: "crimes concerning sexual life are socially dangerous acts, provided for by criminal law, which attack sexual relations and are characteristic of the sexual regime that has been created in society, consisting of the intentional commission, with the aim of satisfying the sexual desire of the subject or

another determined person, of sexual actions, which violate the normal sexual interests for this regime between persons of the opposite sex" [6, p.65].

We draw attention to the fact that sexual crimes represent the group of crimes, provided for in Chapter IV of the Special Part of the Criminal Code, committed intentionally, which attack the freedom and/or sexual inviolability of the person, as well as the normal moral and physical development of minors. The social danger arising from sexual crimes consists, first of all, in the harm caused directly to the victim, and secondly, in the destabilizing consequences they cause in social terms on the normal development of life. In regulating sexual crimes, the legislator has over time implemented the obligations assumed by the Conventions to which the Republic of Moldova is a signatory. In this context, the provisions of the Universal Declaration of Human Rights [10]; Convention for the Protection of Human Rights and Fundamental Freedoms [12]; International Covenant on Civil and Political Rights [11]; Charter of Fundamental Rights of the European Union [13]; Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, adopted in Lanzarote on 25 October 2007 [14], a.o.

Thus, the Universal Declaration of Human Rights provides in Article 11, point 1): "Everyone charged with a criminal offence has the right to be presumed innocent until proven guilty according to law in a public trial at which he has been afforded all the guarantees necessary for his defence" [10]; International Covenant on Civil and Political Rights also states in Article 14, point 3) the following: "everyone charged with a criminal offence has the right, in full equality, to at least the following guarantees: ...to have adequate time and facilities for the preparation of his defence and to communicate with legal assistance of his own choosing; to be present at the trial and to defend himself in person or through legal assistance of his own choosing; if he does not have legal assistance, to be informed of his right to have one and, whenever the interests of justice so require, to be assigned legal assistance free of charge if he has no means of paying for it..." [11]; The Charter of Fundamental Rights of the European Union, which entered into force on 1 December 2009, with the Treaty of Lisbon, in Article 47 stipulates: "... everyone has the opportunity to be advised, defended and represented. Free legal aid shall be granted to those who lack sufficient resources, to the extent necessary to ensure effective access to justice" [13]; and in Art.48 paragraph (2) it is proclaimed that every accused person shall have the right to a defense [13]. With an element of comparative law, we must say that even the African Charter on Human Rights establishes in Art.7, point 1) letter c): "Everyone has the right to a defense, including the right to be defended by a lawyer of his own choosing" [15].

Violation of norms regarding sexual life poses a social danger, because acts that violate freedom or morality in this area are contrary to the interests of the entire society, any attack on the freedom of sexual life or its inviolability also representing an attack on the person's right to bodily integrity and health, honor, and sometimes even to the person's life itself. The person's sexual life is an important social value, which is identified with the vital attribute of preserving the individual and the species, with the very reason for being of the person. It appeared with the person, as a social individual. Its character and forms have changed as the social structure has been reformed. Modern culture exerts influence on the person, causing him to perfect his sexual life [7].

The right to defense of the injured party and the victim is a basic, theoretically and normatively based principle, as expressly provided by the legislator in Art.17 of the Criminal Procedure Code: "(1) Throughout the criminal trial, the parties (suspect, accused, defendant, injured party, civil party, civilly liable party) have the right to be assisted or, as the case may

be, represented by a chosen defense attorney or by a lawyer who provides legal assistance guaranteed by the state, under the terms of the law. (2) The criminal investigation body and the court are obliged to ensure that the participants in the criminal trial fully exercise their procedural rights, under the terms of this code. (3) The criminal investigation body and the court are obliged to ensure that the suspect, accused, defendant has the right to qualified legal assistance from a defense attorney chosen by him or from a lawyer who provides legal assistance guaranteed by the state, independently of these bodies, under the terms of this code and the legislation in force. When hearing the injured party and the witness, the criminal investigation body is not entitled to prohibit the presence of the lawyer invited by the person heard as a representative" [1]. The same is also provided for in the provisions of Art.58 paragraph (3) point 10) and point 11) of the Criminal Procedure Code: "The victim also benefits from the following rights: 10) to be defended from actions prohibited by law in the manner provided for the defense of persons participating in the criminal trial. 11) To be assisted, in the procedural actions carried out with his participation, by a lawyer of his choice;" [1].

The same applies to the rights of the injured party expressly enshrined in Art.60 paragraph (1) point 18 of the Criminal Procedure Code: "The injured party has the following rights: 18) to be represented by a lawyer of his choice, and if he does not have the means to pay for the lawyer, to be assisted, under the law, by a lawyer who provides legal assistance guaranteed by the state" [1]. Developing the idea, we consider that the most sensitive aspect is the guarantee of the rights of the defence counsel in the criminal prosecution. In the case of Vaudelle v. France [16], the European Court of Human Rights emphasized that the system of the Convention for the Protection of Human Rights and Fundamental Freedoms [12] imposes on States in certain cases the obligation to adopt positive measures to effectively guarantee the rights enshrined in Article 6, including the obligation to be informed of the cause and nature of the accusation against the person suspected of having committed a crime. States must show diligence in order to ensure that individuals effectively enjoy the rights guaranteed by Article 6 of the Convention in their entirety [16].

In another order of ideas, in order to ensure full respect and defense of the rights and interests of victims or injured parties (in the case of domestic violence or sexual violence crimes), the legislator, through Government Decision No.173 of 29.03.2023 [9], created a mechanism for the defense of the violated rights and freedoms of these categories of persons, establishing in this regard the Family Justice Center of the Police and Minimum Quality Standards. With the establishment of the Center, victims have expanded possibilities in the defense of their rights and counseling. The beneficiaries of the Center are offered primary legal counseling in the following areas: specific legislation on immediate or long-term protection in cases of violence; victim rights; support in obtaining a protection order; legislation on the act of marriage and divorce; parental rights; legislation on migration; criminal legislation, provisions on medical and social insurance; support in obtaining a lawyer from the National Council for State-Guaranteed Legal Assistance and, if necessary, support in completing legal documents.

An undeniable role of the defense is ensured at the same time by establishing the circumstances of the imputed criminal act, or rather the activity in the criminal evidence, carried out by the defense, but which differs in certain particularities from the activity of the accuser in the criminal evidence. Or, in accordance with Art.94 paragraph (1) point 2) of the CPC: "in the criminal trial, data that were obtained by violating the right to defense of the suspect, accused, defendant, injured party, witness cannot be admitted as evidence and, therefore, are excluded from the file, cannot be presented in court and cannot be used as the basis for the

sentence or other court decisions" [1]. Therefore, the defense is entitled to participate in the evidence, being necessary for this purpose a certain volume of procedural rights. However, by establishing psychological contact with the victim of these categories of crimes, in some cases, the defense attorney, through the injured party, could more easily administer some evidence, as the victim offers him a greater dose of trust and, respectively, provides detailed descriptions of the circumstances in which the criminal act was committed.

Due to the state of anxiety (fear), victims often feel embarrassed in front of the criminal investigation body and are reserved in presenting the entire criminal picture, or, in their view, some subtleties are not important for the criminal case, therefore, in his speech with the victim, the defense attorney must be very attentive to any detail provided by the victim, and then proven, since these during the criminal investigation could contribute to the discovery of the crime and the establishment of the truth.

In our opinion, the discovery and efficient and effective investigation of crimes depends almost entirely on the degree of competence and professionalism of the criminal investigation body, manifested from the initial stage of the investigations, from the stage of the investigation at the scene. The aspects tend to be complicated due to the limited time period, in which the material traces remain unaltered at the scene of the crime, as well as due to the psychological consequences and aftereffects likely to alter the statements of the victim, the injured party, witnesses, etc. And one of the solutions that we consider useful would be the widespread application of forensic methods and means, which on the one hand help preserve the variable forms of evidence, and on the other hand give them a demonstrative and obvious character.

From the existing practice it results that most often the victims of sexual crimes are people from vulnerable social strata, minors, or people with certain disabilities. Some of these categories of victims consider such sexual assaults to be normal, either because they do not perceive them as illegal due to their age, due to their health, or in some cases out of fear of being subjected to further and more serious abuses. Therefore, in such situations the defense attorney needs a longer time to discuss with his client (victim) in order to get to the essence of the problems and to establish precisely the period since such assaults began, so that later the criminal investigation body, when qualifying the facts, can incriminate with certainty the number of episodes committed and their category. In this case, the defender, in addition to his role of defending the fundamental rights and freedoms of the person, also plays the role of a psychologist, because in order to get to the heart of the problem, as we mentioned, it is necessary to establish psychological contact so that the victim can fully disclose what happened.

Thus, in this case, the defense attorney that the legislator has provided for the investigation of these categories of crimes, occupies the role of state prosecutor and together with the criminal prosecution body contributes to the administration of evidence in order to prove the guilt of the perpetrator, as well as the defense of the fundamental rights and freedoms of the victims of sexual crimes.

Through his contribution, the defense attorney submits requests and requests to various state institutions, as a result of which evidence is administered and damage to the honor, dignity and reputation of the victims of the categories of crimes mentioned above is avoided to the maximum. Analysis of contradictions, detection of defects and unilateralism, detection of inadmissibility of the accumulated evidence – all these means cannot be used by the defense, without the administration of its own evidence [8]. We conclude that the criminal process has a series of fundamental principles that mark its entire development.

The European Court of Human Rights seeks to strike a fair balance between the personal integrity of the applicant and the rights of the defence. In the Court's view, criminal proceedings concerning sexual offences have often been perceived as a real ordeal (torture) for the victim, especially when she has been confronted against her will by the defendant. These characteristics are even more prominent in a case involving a minor victim. Therefore, in such proceedings certain measures may be taken to protect the victim, provided that they can be reconciled with the proper and effective exercise of the rights of the defence [17, p.30].

In the case of Y. vs. Slovenia, the Court emphasised that, as a rule, the rights of the defendant under Article 6 §§ 1 and 3 (d) of the Convention require that he be given sufficient and appropriate opportunity to challenge and question a witness who is giving evidence against him, either when he is called to give a statement or at a later stage of the proceedings. On the other hand, in the Court's view, a person's right to defend himself does not translate into an unlimited right to use any kind of arguments in his defence. Thus, since a direct confrontation between defendants accused of violent sexual offences and their alleged victims entails the risk of further traumatising the latter, in the Court's view, cross-examination carried out personally by the defendant must be subject to a more careful assessment by the national courts, all the more so the more intimate the questions are [18].

Victims of sexual crimes are usually female, who are already in a vulnerable position. Their level of vulnerability will increase exponentially if the perpetrator comes from the victim's social circle or entourage, which will intensify her feeling of helplessness. Due to traumatic experiences, victims of sexual crimes are particularly prone to feelings of embarrassment and humiliation. In these circumstances, criminal prosecution bodies must demonstrate maximum sensitivity in approaching the case and respect the victim's natural desire to protect her personal integrity.

Conclusions. We believe that the protection of victims of sexual crimes is a fundamental imperative of a fair and efficient criminal justice system. The right to defense of the victim and the injured party must not only be formally proclaimed, but also concretely ensured through functional institutional mechanisms, friendly judicial procedures and effective psycho-legal support measures.

In this context, it is necessary to strengthen the normative and institutional framework regarding the defense of fundamental social values, such as sexual inviolability, psycho-physical integrity and dignity of the person. State-guaranteed legal assistance measures, psychological and medical counseling, hearing victims in protected conditions and avoiding procedural re-victimization are essential elements for achieving real and efficient protection of injured persons.

At the same time, the role of the defense attorney takes on an expanded dimension in the process of investigating these crimes, going beyond the traditional limits of a passive defense, in the sense of an active participation in the management of evidence and supporting the procedural interests of the victim. The defense activity must be perceived in this context as a complex approach to the defense of fundamental rights, but also as a direct contribution to the achievement of the procedural truth.

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EVOLUTION AND APPLICABILITY OF THE PRINCIPLE OF CRIMINAL LEGALITY IN EUROPE

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Summary

The principle of legality is at the origin of the rule of law. Starting from the latin maxims "nullum crimen sine lege" and "nulla poena sine lege" enshrined in international criminal doctrine, which define the legality of the criminalization of offences and the legality of penalties in criminal law, we are today witnessing a decline of the principle of legality at national level. In this regard, this paper will address the criminal legality in the European area, from the perspective of both European Union Member States and Non-European Union countries, since this aspect will give a necessary dose of clarity to the principle of criminal legality, elucidating the errors of criminalization in national criminal law, allowing to highlight the Soviet nihilism present in the jurisprudence of the Republic of Moldova.

Keywords: legality, criminal law, criminalization, punishment, European criminal law, European area, EU countries, Non-EU countries.

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Introduction. *Timeliness and importance.* First of all, we maintain that the law must serve to the life, be clear and accessible to all. So, we note that the legality of criminal rules is a driving force at both national and European level.

The principle of legality is codified in international instruments, such as Article 7 of the *European Convention of Human Rights*, Article 49 of *the Charter of Fundamental Rights of the European Union*. In this regard, the Court of Justice of the European Union and the European Court of Human Rights are not least the main mechanisms for the protection of legality, and the case law of these courts shapes the main obligations arising from "*nullum crimen sine lege, nulla poena sine lege*" – entitled "No crime, no punishment without law".

Now, the legal framework of the Republic of Moldova is at an impasse in terms of accessibility and predictability of criminalization rules, and this directly violates fundamental human rights, and restricting the exercise of certain rights can be ordered only when is necessary in a democratic society. Worse is that the spread of the illegality of criminalization creates an image deficit for the Republic of Moldova at the European level, an important aspect for our state, as it has been striving for some time to join the European vector, in order to establish a fair justice, eliminate arbitrariness and Soviet nihilism still present in the criminal justice system of the Republic of Moldova [21].

It is of paramount importance to approach criminal legality in comparative crimi-

nal law both from a theoretical, but especially from a practical point of view, in order to exclude the extensive unfavorable interpretation of national criminal law as well as the mischaracterization of criminal acts by national law enforcement bodies [21].

So, there is a clear need to emphasize the rule that an act, even if it presents a danger to society, will only attract criminal liability if, at the time it was committed, it was provided by law as a concrete crime [21].

Based on the above arguments, we believe that it is appropriate to examine the comparative law aspect in order to identify the best European practices, which will be the basis for giving the text of the criminal law of the Republic of Moldova the necessary dose of clarity, the comparative law aspect, moreover, playing a leading role in every scientific research. Moreover, the criminal law must be clear for everyone and correspond to the level of standardization of European criminal norms, so as to exclude the possibility of ambiguous interpretation in the future.

In this vein, we believe that the proposed study dedicated to the principle of legality in comparative law will be useful both in criminal doctrine and in the practice of transposing criminal law norms into practice in order to promote the highest standards of predictability and clarity of the incriminating text of the norm, a need that is also felt among law enforcement bodies [21].

Methods and materials applied. The following methods have been used in order to achieve the intended purpose of this paper: *the analysis*, under the fundamental aspect of the concept of criminalization of criminal legality is imposed with poignancy, reflecting the most prominent criteria of criminal legality at the international level, in the light of the ECHR regulations and the judicial precedent of the European Court of Human Rights, also in the light of the criminal codes of the European Union states, being analyzed in detail and the best practices of the criminal legislation of the EU Member States as well as non-EU ones are drawn; *the comparative method*, is the leading method of the study, being applied in order to make a broad comparative analysis of the perceptions of the legality of the criminalization of criminal acts in European criminal law in co-report with the national one, emphasizing in particular the regulation of criminal legality in the criminal codes of the EU Member States; *generalization* is the basis of the analysis of the study, being drawn the most relevant ideas and conclusions at the theoretical level as well as in practical aspect regarding the rule of criminal legality.

The aim of the paper is to elucidate the evolution and regulation of criminal legality at the European level, both in the EU Member States and in the non-EU states, as this aspect will provide a necessary dose of clarity in the doctoral research paper, as well as will directly highlight the gaps in the legislation in this area, being a topical subject.

Discussions and results obtained. The principle of legality is a cornerstone of criminal justice systems throughout Europe, codified in international instruments such as Article 7 of the European Convention of Human Rights and Article 49 of the Charter of Fundamental Rights of the European Union. Moreover, the Court of Justice of the European Union and the European Court of Human Rights are not least the main mechanisms for the protection of legality, and the case-law of these courts shapes the main obligations arising from "*nullum crimen sine lege, nulla poena sine lege*". In this regard, both Article 7 of the ECHR and Article 49 of the EU Charter prohibit the conviction of a person for an act which was not a crime at the time of its commission and the imposition of a heavier penalty than that prescribed at the time of the commission of the act.

In the light of Article 7 of the European Convention on Human Rights "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 when it was committed. Nor shall a heavier penalty be imposed than that which was applicable at the time when the crime was committed" [1].

Legality has been a determining vector since the founding of the Union and, respectively, with the adoption of the Charter of Fundamental Rights of the European Union, the main instrument for the protection of the fundamental rights of citizens of the EU Member States, which in Title VI, entitled "Justice", in Article 49 "Principles of legality and proportionality of criminal offenses and penalties" regulates legality as follows: "No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than that which was applicable at the time of the commission of the offense. If, subsequent to the commission of the offense, the law provides for a lighter penalty, the latter shall apply. The penalties must not be disproportionate to the offense" [1].

Moreover, the evolution of the principle of legality and legislative harmonization is achieved through the adoption of international acts of common interest of irreproachable importance, especially European Union directives, like: Directive 2011/36/EU imposing sanctions to prevent and sanction the crime of trafficking in human beings; EU Directive 2017/541 on combating terrorism, obliging Member States to criminalize such acts; EU Directive 2013/40 on attacks against information systems; EU Anti-Money Laundering Directive 2018/1673; Directive 2017/1371 criminalizing fraud that affecting the EU budget; Directive 2008/99 which makes it a criminal offence to cause serious environmental damage; EU Directive 2017/2103 extending the list of banned substances, etc. [23].

However, we note that in recent decades crime has spread throughout the world, and we conclude that there should be a well-defined European criminal law of the EU states. Notwithstanding this fact, we can say that there is no distinct branch of European law, however, as the states at national level are still in control of determining the nature of criminal punishments and the amount of them, each having a criminal code determined in this respect, with criminal incrimination and criminal penalties varying from one state to another. Over the years, however, there have been several controversies among researchers in order to build a single and distinct criminal law of the European Union, one of the most certain reasons being that criminals can take advantage of the existence of various differences in the legal systems of the states, planning the criminal acts in one state, then they end up carrying them out in another state and then take refuge in the third state, and so on.

We deduce that criminal legality in the European Union area is regulated in conjunction with the notion of proportionality of the crime, and in this regard with reference to the proportionality of penalties the legislator regulates: "Any restriction on the exercise of the rights and freedoms recognized by this Charter must be provided for by law and respect the substance of those rights and freedoms. In compliance with the principle of proportionality, restrictions may be imposed only if they are necessary and only if they genuinely meet objectives of general interest recognized by the Union or the need to protect the rights and freedoms of others" [1; 23].

In the following we will analyze criminal legality as it is approached in the Member States of the European Union as well as in non-EU European states. Although criminal law is largely a national matter, the EU plays a major role in harmonizing the laws of the 27 countries and coordinating the fight against cross-border crime. In carrying out this research we can notice that legality is at the root of the criminal law system of the EU

Member States, since for the most part, it is regulated in Section I of the Criminal Codes, which presumes that legality is regarded as a fundamental rule and framework provision from which the criminal legislation of each state starts, promoting an area of fairness and justice common to the Member States.

An eloquent example is **Croatia**. In Croatian criminal legislation, the principle of legality is enshrined in Article 2 CC, which states: "No one may be punished for an act which, prior to its commission, has not been established by law or international law as a criminal act and may not be sentenced to a punishment or other criminal sanction which has not been established by law" [4].

Also, in the **Czech Republic** we find provisions on legality in Chapter I regulated in a distinct and much broader way, entitled "Competence of criminal legislation", where in section I entitled "No offense without law" it is mainly regulated the non-retroactivity of criminal law by: "An act is criminal only if it was provided by law before it was committed" [5]. Article 5, paragrath (3) of the Constitution of the **Republic of Bulgaria** regulates: "No one may be convicted for an act or inaction which at the time of its commission did not constitute a criminal offense".

In German law we also find regulations related to the principle of legality in the Criminal Code, in section I entitled "No punishment without law", which states that "An act can only entail a punishment if criminal liability has been established by law before the act was committed" [7]. **In Spain**, in Article 1 of the Criminal Code: "No act or omission shall be punishable unless it is provided for as an offense by law prior to its commission" [8].

In **Italy**, in Article 1 of the Criminal Code entitled "Offenses and Punishments": "No one may be punished for an act that is not expressly provided for as an offense by law, nor with penalties that are not established by law" [10].

In the **State of Denmark** in Section I of the General Part of the CriminalCode it is stated that: "Punishment may only be inflicted for a situation whose criminality is authorized by law, or which must be equated with such a situation" [13].

In Austrian criminal law, the principle of legality is regulated by the phrase "No punishment without law" in Section 1, Chapter I: "An offense can only be punished if it was established by law before the act was committed" [12].

In Article 111-3 of the **French** Criminal Code: "No one may be punished for an offense the elements of which are not defined by law, or for a contravention the elements of which are not defined by regulation". At the same time, French legislation regulates legality in terms of the degree to which the act is punishable by law, abstracting the distinction between a criminal act and a contravention: "No one may be punished by a penalty that is not provided for by law, if the act is a criminal offence or a contravention, or by regulation, if the offence is a contravention". In Article 111-4, we find the following provision: "Criminal law is subject to strict interpretation", which shows that ambiguous interpretation by analogy of criminal provisions is not allowed in French criminal law, the rules being subject to strict interpretation [11].

In **Romania** legality is expressly divided in the Criminal Code into two distinct articles. Article 1 entitled "Legality of criminalization" reads as follows: "The criminal law provides for the acts that constitute offenses. No person may be criminalized for an act that was not provided for by criminal law at the time it was committed". Article 2 also provides for the legality of criminal punishment in the following manner: "The criminal law prescribes the applicable punishments and educational measures that may be taken against persons who have committed criminal offenses, as well as security measures that may be taken against persons who have committed acts provided for by the criminal law.

A punishment may not be imposed or an educational or security measure may not be taken if it was not provided for by criminal law at the time when the act was committed. No penalty may be determined and imposed outside its general limits" [9].

From the above in this paper, we can conclude that the criminal legislation of the EU Member States is standardized according to the standards of quality of the law in the aspect of criminalization and sentencing according to the Charter of Fundamental Rights of the European Union. So, in all states we find practically the same expression of normative regulation, except for a few textual differences, and basically all of them bear the same meaning and character of criminal legality regulation, as stipulated in the Charter of Fundamental Rights of the EU in the Article 49 – „Principles of legality and proportionality of criminal offenses and penalties". From a structural point of view, criminal codes vary from one country to another, but they do not have any divergent amendments, as they are made up of a general part, which generally provides for criminal sanctions, criminal liability, the subject of the crime, the attempt, etc., and a special part, which provides for the system of criminal offenses and penalties, where each criminal act is criminalized in separate chapters and the corresponding penalties are provided for. Of course, in some criminal codes of the countries we do not find the same criminal offenses and penalties as in others, which is due to the different legal systems, as each country has its own unitary system of law.

In European countries that are not members of the European Union, the principle of criminal legality has, in general, the same legal foundations and is applied directly in accordance with international and national rules. Moreover, we note that these countries respect principles similar to those in that are in European Union, largely due to international commitments and integration into human rights protection systems, in particular through the European Convention on Human Rights (ECHR), to which 46 countries are currently signatories.

Another moment is that many Non-EU states, for example Canada, the United Kingdom, apply the common law system, where judicial precedent plays one of the most essential roles in determining offenses and punishments, which can be considered as an aspect of the application of criminal arbitrariness. Although not all non-EU states are part of the legal mechanisms of the Council of Europe (such as the ECHR), some states are parts to other international acts protecting human rights, for example: *The International Covenant on Civil and Political Rights*, which influences the legality of legal acts and the respect for the fundamental rights of accused, convicted persons. Also, most European countries that are not members of the EU, such as: Republic of Moldova, Norway, Switzerland, Iceland and Serbia, etc. are signatories to the ECHR. Moreover, article 7 of the Convention provides a mechanism to ensure respect for the principle of "*nullum crimen, nulla poena sine lege*". It can therefore be noted that in these States, the European Court of Human Rights supervises compliance with this principle, which is contrary to criminal arbitrariness, and citizens may bring a case before the Court if they consider that their fundamental rights have been violated, including by violating the principle of criminal legality, by improper criminalization of the act, by misapplication of the law, by application of analogy of legal rules, by application of provisions of criminal law unfavorable to the plaintiff, and others. In every Non-EU country, the principle of legality is enshrined directly in the supreme law of the state as well as in criminal codes. In particular, there are numerous mechanisms in place to ensure respect for the rule of law, as all non-EU states are signatories to international conventions, for example the UN *Convention against Corruption or the Geneva Conventions*. These international conventions require States to adapt their national legislation to respect the principle of legality and to clearly define international crimes, in the case of war crimes or

torture. Moreover, the features of criminal legality are common to all States, which presupposes that all the essential characteristics of the rules are met, referring in this respect to: *lex scripta*; *lex stricta*; *lex praevia*; *lex certa* [22].

In the following we intend to analyze the legality as it is approached in some European countries that are not members of the European Union.

The Republic of Moldova, first of all, is a sovereign state, a state governed by the rule of law, which contains provisions referring to legality both expressly in the Supreme Law of the state, directly in the Constitution of the Republic of Moldova and in the only criminal law of the Republic of Moldova, in Article 3, entitled "N*o punishment without law*", according to which "No one may be found guilty of committing a crime or subject to criminal punishment, except on the basis of a court decision and in strict accordance with the criminal law. Extensive unfavorable interpretation and application by analogy of the criminal law are prohibited" [6].

However, we recognize that a problem of increased resonance of the criminal system of the Republic of Moldova is the Soviet coat that the Republic of Moldova still wears in the legislative aspect. Moreover, reiterating this idea, we deduce that the Criminal Code of 2002 regulated the criminal legality under the same aspect as the provisions of the current Criminal Code of the RM [21].

In substance, we agree with the aspects of law enforcement proposed by the authors R. Cojocaru and V. Jitariuc in their seminal work "The principle of criminal legality: elements of content and evolutionary trends", in which the authors emphasized the reformulation of Article 3 „Principle of legality" of the Criminal Code as follows: "(1) A person cannot be subject to criminal punishment for an act that was not provided for in this Code as a crime at the time it was committed. (2) The criminal law shall prescribe the punishments and security measures that may be imposed on persons who have committed criminal offenses. Measures of constraint of criminal liability may not exceed the limits prescribed by this Code. (3) The criminal law is of strict interpretation, and unfavorable extensive interpretation and application by analogy of the criminal law are prohibited" [20].

The relevance of this regulatory framework, especially the Article 3 of the Criminal Code of the Republic of Moldova, has been viewed ambiguously countless times; moreover, the authors come up with proposals for law enforcement that no one has yet taken into consideration, and meaningless provisions continue to persist.

In other words, turn to the jurisprudence of the Republic of Moldova constitutes its number of convictions in front of the CtEDO with respect to the violation of Article 7 of the European Convention on Human Rights, due to the existence of numerous uncertainties regarding the incrimination of criminal offenses and the establishment of penalties in the fundamental penal law of the Republic of Moldova [21].

The principle of legality in the frame of the Russian Empire was consecrated even in the 19th century under its classic form "no crime without law". In this sense, Art.1 of the Code of Laws of the Russian Empire provided that "Any act prohibited by the law under the sanction of punishment is an offense". A similar provision was contained in Art.4 of the Statute of Criminal and Correctional Punishments of 1845, which provided that: "A crime or a misdemeanor is both the illegal act itself and the omission to do what is provided for by law within the framework of the criminal or correctional sanction" [24].

According to the Constitution of the Russian Federation, legality is expressly provided for in Article 15, which regulates: "The Constitution of the Russian Federation has supreme legal force, direct effect and applies throughout the territory of the Russian Federation". According to Article 3 of the Criminal Code of the Russian Federation entitled

"Principle of legality", it is stipulated: "The criminality of an act, as well as its punishment and other criminal and legal consequences are determined only by this Code. The application of criminal law by analogy is not permitted" [23; 31], which denotes that a person can be held criminally liable only for acts that are explicitly provided for by criminal law. Those who come to apply the law cannot impose penalties other than those provided for by law [68]. With reference to the guilt of the perpetrator, the Criminal Code of the Russian Federation, in Article 5, provides for the principle of guilt, which stipulates: „A person is criminally liable only for those socially dangerous actions (inactions) and for those socially dangerous consequences in relation to which his guilt is established" [14].

The legislation of the **Republic of Turkey** states that: "Only an act that is clearly defined as a crime in law is punished. No one can be punished for an act that is not clearly defined as a crime in law". Ignorance of criminal law is not considered an excuse. There is no perfect crime or punishment in Turkish criminal law. No person can be held responsible and punished for the act of another person. A person who has committed a crime must receive a fair punishment in accordance with human rights, depending on the gravity of the crime. Minors are not punished for crimes they may commit up to the age of 12, but security measures may be imposed on them" [18].

However, Turkey is among the states that are frequently convicted before the ECtHR for violating the principle of legality of criminalization, the application of an arbitrary decision, according to Article 7 of the ECHR, especially in the context of terrorist acts. In this regard, we are referring to the following cases: *Tekin Akgün v Turkey*, *Alparslan Altan v Turkey*, *Hakan Baş v Turkey and Turan and 99 100 others v Turkey*, *Selahattin Demirtaş v Turkey*, *Osman Kavala v Turkey*, *Yasin Özdemir v Turkey*, *Ilıcak v Turkey*, *Gültekin Sağlam v Turkey*, *Yüksel Yalçınkaya v Turkey*, *etc.*

In the **Norwegian Criminal Code** the principle of legality is enshrined in article 14, which stipulates that: "A person may only be held criminally liable for acts that are defined as crimes by the criminal law in force at the time of their commission" [15].

Belarus is a sovereign state where the harshness of criminal penalties persists, as the death penalty is still present in the criminal legislation of the state. The Constitution of Belarus enshrines the supremacy of law and respect for the law by all state authorities. The principle of legality in the criminal legislation of Belarus is found in paragraph 2 of Article 3, the norm that regulates: "No one may be found guilty of committing a crime and be subject to criminal liability in a different manner, only in accordance with the court verdict and in accordance with the law". The crime, its punishment and other criminal consequences in law are determined only by this Code. The norm is subject to strict interpretation. The application of criminal law by analogy is not allowed" [3].

In the Criminal Code of **Georgia**, criminal legality itself is not regulated, but in Art.36 we encounter the notion of error or mistake of law, which is related to the notion of legality, which stipulates that: „A person who does not know that the act he commits is prohibited shall not be punished only if the mistake is pardonable. A mistake is considered excusable if, in the given circumstances, the person does not know and could not have been aware that he is committing a prohibited act. When a mistake is not excusable, the person can be held liable only for negligence" [17].

According to the author A. Makharadze, analogy in the criminal law system is an important topic of discussion in the context of the Georgian legal system. It can arise when a certain situation or action is not covered by clear provisions of criminal law. In such cases, courts and law enforcement officers can identify analogies with similar situations or legal norms that already exist to be applied in a similar situation, otherwise this aspect violates

the legality of criminal incrimination and the legality of establishing a fair punishment, being rigorously violated the features of criminal legality, which forcefully require compliance with the standards of clarity of the norm, such as: predictability, clarity, strictness, etc. Georgia is also among the states frequently convicted before the ECtHR due to violation of Article 7 of the ECHR. An example is *the case of Antia and Khupenia v. Georgia*, in which the applicants were charged with breach of duty and were convicted two years after the commission of the offence, when the offence was already time-barred [1; 2].

Conclusions. In light of what is reported in this paper, we support the idea that the comparative law aspect is more than necessary in approaching the rule of criminal legality. We conclude that in the Member States of the European Union, the principle of legality is more clearly addressed, more detailed, being protected due to the common standards imposed by the EU, and as for the Non-EU states, the clarity of the norms depends on its legal system as well as on the respect for the rule of law. Also, for the European states with an authoritarian and unstable regime the arbitrary applicability of criminal legality is still characteristic, since the justice is predominantly under the influence of political power. At the same time, in some Non-EU states, but which are members of the Council of Europe, the principle of criminal legality is applied according to the ECHR standards (Republic of Moldova, Turkey, Georgia, Belarus, Russian Federation).

In this sense, we see the moment when the Republic of Moldova will join the European Union, and legislative unification will constitute one of the main levers of the European vector, a necessity felt at present. We conclude that in the Republic of Moldova the law as a guarantor of society must meet the conditions of the quality standard of norms at the European level. The guarantee contained in Article 7 of the ECHR "No punishment without law" and in Article 49 of the EU Charter of Fundamental Rights occupies a prominent place in the legal system of states, representing the principle of the legality of crimes and punishments (*nullum crimen sine lege*, *nullum poena sine lege*) at the global level.

Despite this fact, in any legal system, no matter how perfect the norm may be in terms of clarity and predictability, it must be interpreted accordingly and fairly. The Republic of Moldova is one of the most reprehensible states in the world before the ECtHR, in terms of serious violations of the fundamental rights of citizens, excluding the provisions of Article 7 of the Convention. This is due to the incorrectness of the criminalization of criminal acts as well as the erroneous and unfavorable application of criminal penalties against its own citizens.

Another aspect that was emphasized in this paper is the interference of international and European criminal law with national law, moreover, we still note the presence of vague legislative regulations in the Criminal Code of the Republic of Moldova, which are likely to mislead litigants.

However, even though the Constitutional Court of the Republic of Moldova declared a number of unconstitutional provisions lacking predictability through Constitutional Court Decision No.24 of 17.10.2019 on the review of the constitutionality of certain legal provisions in the Criminal Code, the local legislator has not yet amended the criminal legal framework to exclude these loopholes in absolutely all criminalization norms. Accordingly, the legality of the incriminations remains affected because the criminal norms are not clear, they lack predictability and meaning. In other words, this fact raises many questions for citizens of modern states governed by the rule of law, and sentencing individuals according to these provisions would seriously violate fundamental human rights.

Regarding the scientific results obtained, which also reflect the scientific novelty of this work, we can note the following:

– The models of regulating legality in European and international criminal legislation were revealed.

– A detailed comparative law study was conducted regarding the approach to the structure of criminal legality in EU and non-EU member states, noting that in EU states the legislation is unified according to European standards, being unique and common, while in non-EU states there are still many requirements.

– The need for legislative amendments was noted, especially of Article 3 of the Criminal Code of the Republic of Moldova, in order to eliminate the Soviet legal nihilism still present in the Criminal Code of the Republic of Moldova, mainly highlighting the problems faced by the national criminal law – those visible gaps that seriously violate the principle of criminal legality.

– With the accession of the Republic of Moldova to the European vector, the need to address the principle of legality in the Criminal Code of the Republic of Moldova was emphasized in Article 3 as it is provided at the European level, clearly and stipulates: "No one may be convicted of any act or omission which, at the time it was committed, did not constitute a criminal offence, under national or international law. Likewise, no more severe punishment may be imposed than that which was applicable at the time the crime was committed. This article shall not prejudice the trial and punishment of a person guilty of an act or omission which, at the time it was committed, was considered a criminal offence according to the general principles of law recognized by civilized nations".

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THE IMPACT OF ALCOHOL CONSUMPTION ON JUVENILE DELINQUENCY

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Summary

Juvenile delinquency is a complex phenomenon influenced by multiple social, economic, and psychological factors, among which alcohol consumption plays a significant role. This article examines the impact of alcohol consumption on juvenile offending behavior, highlighting the relationship between substance abuse and minors' involvement in delinquent acts.

The analysis is based on criminological studies and relevant statistical data, underlining the fact that alcohol may reduce inhibitions, thus favoring aggressive, violent, or antisocial behaviors. Excessive alcohol consumption among minors is frequently associated with offenses such as vandalism, theft, assault, and even crimes against life. The research also explores the influence of family environment, the accessibility of alcohol, as well as deficiencies in supervision and education as aggravating factors of this phenomenon.

Keywords: delinquency, safety, alcohol, supervision, minors, liability, prevention, education.

Introduction. Juvenile delinquency represents a major challenge for public safety policies and criminal justice systems, being the result of an interplay of structural, psychosocial, and contextual factors. Among these determinants, alcohol consumption among minors stands out as an aggravating factor, likely to stimulate deviant and antisocial behavior, particularly in settings marked by familial or social vulnerability. Moreover, this practice is frequently associated with early criminal debut and a higher probability of recidivism.

On the other hand, empirical data from contemporary criminology reveals that alcohol, through its disinhibitory effect and the distortion of reality perception, significantly contributes to the erosion of self-control, increased aggressiveness, and the occurrence of violent or hazardous conduct. Therefore, specialized literature identifies alcohol not only as a psychoactive substance posing health risks, but also as a criminogenic factor within the etiological structure of juvenile criminality.

In this regard, the regulatory framework and preventive policies must be approached in an integrated manner, taking into account legal, educational, and institutional mechanisms capable of limiting minors' access to alcoholic beverages and reducing their expo-

sure to dysfunctional behavioral models. Accordingly, the present study aims to provide a multidimensional analysis of the impact of alcohol consumption on juvenile delinquency, drawing on doctrinal instruments as well as relevant statistical data and jurisprudential sources.

Methods and materials applied. This study is based on a mixed methodology combining legal-normative and criminological approaches. Firstly, documentary analysis was employed focusing on relevant legislative instruments such as the Contravention Code of the Republic of Moldova, Law No.713/2001 on the prevention of alcohol abuse, and Law No.370/2023 on children's rights.

Secondly, content analysis was applied to official reports issued by state authorities, particularly statistical data provided by the General Police Inspectorate, the Ministry of Health, and the National Bureau of Statistics, in order to identify behavioral trends and correlations between alcohol consumption and juvenile delinquency.

Furthermore, the study examined institutional practices and administrative measures in the field of public health and child protection, including educational and community initiatives developed under the National Program for the Prevention and Control of Noncommunicable Diseases.

Theoretical support was drawn from academic literature in the fields of criminology and contravention law, as well as from international instruments such as UN conventions and European documents on child protection. This methodological framework enabled a critical and context-aware assessment of the phenomenon, leading to evidence-based and doctrinally grounded conclusions.

Discussions and results obtained. According to the study conducted by the Swiss Foundation "Terre des Hommes" in the Republic of Moldova [1, p.12], in the process of outlining the psychological and behavioral profile of minors exhibiting deviant or delinquent behavior, the authors highlight a low level of interest in healthy lifestyles or risk prevention. This attitude stems from the adolescents' mistaken belief in their invulnerability to diseases or social dangers due to their age. As a consequence, they tend to easily adopt a series of high-risk behaviors, such as alcohol consumption, drug use, synthetic psychoactive substances, and smoking, as well as self-aggressive conduct (including self-harm, excessive tattooing, or suicide attempts).

This reality is further corroborated by official data provided in the information note [2] on juvenile delinquency and child safety-related activities conducted by the General Police Inspectorate of the Republic of Moldova in 2023. With the aim of safeguarding the best interests of the child, authorities documented the following relevant administrative offenses:

– 49 offense reports (compared to 56 in 2022) under Article 88 of the Contravention Code concerning the act of inducing a child into a state of alcoholic intoxication;

– 39 offense reports (compared to 73 in 2022) under Article 91 paragraph (2), regarding the sale of alcoholic beverages to minors.

Concerning the application of Article 16 of the Contravention Code, which establishes contravention liability for minors aged between 16 and 18, authorities recorded 787 reports in 2023 (a notable increase from 600 in 2022), among which the following categories are particularly relevant to our analysis:

– 42 cases of insult (Article 69);

– 44 cases of bodily injury (Article 78);

– 15 cases of intoxication of minors (Article 88 para.(1));
– 16 cases of alcohol consumption in prohibited places (Article 91 para.(1));
– 129 cases of petty hooliganism (Article 354);
– 50 cases of alcohol consumption and appearance in a state of intoxication in public spaces (Article 355);
– 33 cases of disturbing public peace during nighttime (Article 357).

Therefore, the correlation between alcohol consumption and antisocial or criminal behavior among minors emerges as an alarming phenomenon, one that necessitates an in-depth criminological approach, both from the perspective of identifying risk factors and improving mechanisms of effective prevention.

Another significant aspect highlighted in the abovementioned report concerns the general dynamics of juvenile criminality for the year 2023. Thus, according to the competent authorities, during the analyzed period, minors or criminal groups involving minors committed 449 offenses, compared to 701 in 2022, indicating a substantial decrease of 35.95%. This decline may be interpreted as a positive outcome of enhanced preventive measures; nevertheless, it also calls for a deeper examination of the quality and nature of the offenses committed.

The structural analysis of juvenile criminality for the year 2023 reveals the following distribution by offense categories:

– Offenses against property, recorded a decrease of -58.44% (301 cases compared to 515 in 2022), with the following subcategories:
• Thefts: -36.84% (264 cases in 2023 compared to 422 in 2022);
• Robberies: -61.9% (32 cases compared to 84);
• Muggings (violent thefts): -44.44% (5 cases compared to 9).
– Offenses against public security, such as hooliganism, decreased by -28.12% (23 cases in 2023 compared to 32 in 2022).
– Offenses against sexual integrity, decreased by -27.27% (8 cases in 2023 compared to 11 in 2022).
– Offenses against public health, especially those related to narcotic substances, experienced a slight reduction of -11.11% (8 cases versus 9).
– Offenses in the sphere of family relations, increased by +300% (4 cases in 2023 compared to 1 case in 2022), suggesting a possible escalation of intra-family conflicts involving minors.
– Offenses against life and bodily integrity were significantly reduced (-95.0%), with only one case of intentional bodily harm reported and no cases of homicide registered in 2023 (compared to 6 such cases in the previous year, including 2 homicides).
– Other categories of offenses, decreased by -81.88%, with 104 cases recorded, compared to 127 in the preceding year.

Additionally, the data indicate that a significant proportion of the offenses were committed under aggravating circumstances:
• 64 offenses were committed in organized groups (compared to 106 in 2022);
• 24 cases involved alcohol intoxication (down from 35 in 2022), indicating a direct link between alcohol consumption and criminal behavior;
• 52 offenses were repeat offenses (down from 95);
• 4 offenses were committed in family-related contexts (compared to 1 in 2022).

As for the social status of the minors involved in criminal activity, the following dis-

tribution was observed:

- 321 minors came from intact (two-parent) families (down from 497 in 2022);
- 116 from single-parent families (compared to 171 in 2022);
- 48 were separated from their parents (down from 78);
- 9 were children without a stable domicile (compared to 29 in 2022).

These figures underscore a significant correlation between family instability and the vulnerability of minors to deviant behavior. Accordingly, social and psycho-familial factors remain crucial in the criminological analysis of juvenile delinquency, while alcohol consumption frequently acts as a catalyst for such criminal behavior.

A key element in continuing the analysis concerns the social and behavioral characteristics of minors involved in criminal activity. Out of the total 735 children who committed or participated in the commission of criminal offenses in 2023, 207 minors (compared to 328 in 2022) were neither employed nor enrolled in any form of education or had dropped out of school, while 260 minors (711 in 2022) were enrolled in the education system. This trend highlights a critical criminogenic factor – the exclusion or self-exclusion of minors from the educational sphere, which contributes significantly to their vulnerability and propensity for engaging in illicit activities.

Another alarming indicator refers to alcohol consumption among juvenile offenders, where 34 minors (47 in 2022) committed offenses while under the influence of alcohol. In such cases, alcohol acts not only as a facilitator of antisocial conduct, but also as a manifestation of a complex of risk factors, including family dysfunction, lack of supervision, negative peer influence, and social exclusion.

In parallel, over the twelve months of 2023, authorities recorded 876 cases of voluntary and intentional departures of children from their homes or placement institutions (compared to 1,090 cases in 2022), involving 551 children (791 in 2022), of whom 322 were girls and 229 boys. Of these incidents, 528 were repeat cases, and 109 involved group departures, indicating a pattern of consistent and recurring risky behavior.

The analysis of the background environments of the minors who left their homes or placement institutions reveals the following:

- 296 children left from family settings (175 from two-parent families and 121 from single-parent families);
- Based on socio-economic status: 161 children came from socially vulnerable households, and 135 from materially stable families;
- 255 children left from placement centers or other forms of institutional care.

The age distribution of children who intentionally ran away is relevant for constructing the vulnerability profile:

- Under 9 years old: 16 children;
- Between 10-13 years old: 118 children;
- Between 14-16 years old: 364 children;
- Between 17-18 years old: 53 children.

Moreover, in terms of residential environment, 341 children originated from urban areas, while 210 were from rural areas which suggests a higher prevalence of this phenomenon in urban settings – where exposure to risk factors and negative influences tends to be more intense.

The report also documents 585 incidents involving 594 children, of which 61 cases included alcohol consumption, particularly in domestic contexts. From the perspective of

family background:

- 575 children were raised within families, while 19 were placed in institutional care;
- 498 came from two-parent families, while 77 from single-parent families;
- 113 children belonged to socially vulnerable households, whereas 462 were from materially stable families.

These data strongly confirm that a significant proportion of minors involved in incidents and offenses acted under the influence of alcohol, which clearly justifies the need for a multidimensional approach to the impact of alcohol consumption on juvenile delinquency – through the lens of the social, familial, and educational factors that foster such behavior.

An important conclusion derived from the above analysis is that juvenile delinquency is not confined to minors from single-parent or socio-economically disadvantaged families, contrary to the stereotypical perceptions often propagated in the public discourse. The magnitude of this phenomenon requires, therefore, the broadening of research to encompass all family and social categories, within a comprehensive and complex analytical framework focused on the contexts that generate delinquent behavior among minors.

In this regard, both the national and international legal frameworks on child protection provide relevant normative benchmarks. According to Article 24, paragraph (3) of the United Nations Convention on the Rights of the Child [3], State Parties are required to undertake all effective measures to abolish traditional practices harmful to the health of children. In the Republic of Moldova, Law No.338/1994 on the Rights of the Child [4], in force until 2023, guaranteed the protection of children against all forms of exploitation, physical and psychological violence, as well as their involvement in criminal activities, initiation into alcohol consumption, psychoactive substances, sexual exploitation, or participation in illegal practices.

With the adoption of Law No.370/2023 on the Rights of the Child [5], the Republic of Moldova reaffirms its commitment to ensuring a clean, healthy, and safe environment for child development, integrating these principles into public policies related to education, healthcare, child protection, migration, and access to green spaces. The law also establishes that the state is responsible for developing the legal framework on child protection in accordance with international standards, assuming the obligation to promote the best interests of the child, defined as ensuring the optimal conditions for harmonious growth and development, while considering individual particularities and personal context.

It is, however, noteworthy that – unlike the previous law – the new legal framework does not explicitly address the issue of alcohol consumption or the protection of children against intoxication or initiation into culturally tolerated destructive behaviors. This omission may be regarded as a regression in addressing alcohol use as a criminogenic factor among minors and underscores the need for future legislative adjustments.

Furthermore, global data on alcohol consumption reveal a concerning trend at the national level. According to the Central Intelligence Agency of the United States [6], the Republic of Moldova ranked 54th out of 189 countries in 2019, with an average annual consumption of 7.45 liters of pure alcohol per capita. In the same vein, the National Bureau of Statistics reported that in 2024, the average monthly expenditure per person was 4407.0 MDL, showing a real decrease of 0.9% compared to the previous year, but with a proportional increase in spending on food, non-alcoholic and alcoholic beverages, and tobacco (+0.2 percentage points) [7]. This indicates a stabilization or even intensification

of alcohol-related spending despite the population's increasing economic pressures.

Accordingly, this study aims to analyze the measures undertaken by the Moldovan state to reduce alcohol consumption among minors and to assess the effectiveness of public policies in preventing juvenile delinquency generated or exacerbated by alcohol use.

In this regard, the Report on the Implementation of the Provisions of the National Program for the Prevention and Control of Priority Noncommunicable Diseases in the Republic of Moldova for the Years 2023-2027, drafted by the Ministry of Health [8], constitutes a key reference. Under Specific Objective 2.3, the document provides for the consolidation of sustainable and culturally appropriate measures aimed at reducing the overall alcohol consumption by 5 percentage points (from 63.2% in 2021 to 58.2% by 2027).

Nevertheless, the report highlights certain shortcomings in implementation, with several planned indicators for 2023 remaining unmet. Among these are:

The lack of legislative amendments to Law No.62/2022 on advertising, specifically aimed at restricting the promotion of alcoholic beverages;

The absence of legal adjustments to Government Decision No.296/2009 (initiated by the Ministry of Internal Affairs), intended to establish zero blood alcohol concentration limits for young, novice, or professional drivers.

On the other hand, some notable achievements have been recorded, particularly in the educational and community sectors, targeting adolescents and young people – considered a key group in forming healthy life habits. According to specialized studies, approximately 70% of individual behaviors and habits are shaped during childhood and can persist throughout a person's life. During the reference period, several initiatives were implemented, among which the following are noteworthy:

• The expansion of the "Health-Promoting Schools" (HPS) network by 37 new institutions, reaching a total of 79 schools. These institutions implement annual systematic plans focused on promoting student health and well-being;

• The organization of information and counseling activities within Youth-Friendly Clinics;

• The delivery of health education lessons, including peer-to-peer education methods.

However, despite the report's references to the intensification of healthy lifestyle promotion activities – including in schools – an institutional paradox becomes evident: over 500 formal requests were submitted by the police to local social commissions within municipalities, requesting the initiation of forced alcohol detoxification procedures for minors found intoxicated. Nevertheless, the report provides no clear information on the outcome of these requests, leaving the effectiveness of post-factum interventions uncertain.

From a legal perspective, Law No.713/2001 on the control and prevention of alcohol abuse, illicit drug use, and other psychoactive substances [9], under Article 13, stipulates that individuals who abuse alcohol and cause disturbances within the family or in public may be subjected to mandatory medical evaluation, if they refuse voluntary assistance, after repeated warnings or sanctions issued by law enforcement bodies. The narcological commission is the competent authority for assessing the level of dependency and recommending a treatment program. Article 14 of the same law provides that the procedure is initiated by the local social issues commission, within the jurisdiction where the individual resides.

To support the aforementioned conclusions, it must be emphasized that although

Law No.713/2001 establishes clear legal mechanisms for mandatory treatment of persons with alcohol dependence, the implementation of these provisions remains deficient. Thus, according to Article 15 individuals for whom alcohol dependence has been confirmed may be compelled to undergo inpatient or outpatient treatment in specialized institutions. The decision to subject the individual to treatment is made by the court, upon request by the local social issues commission, based on the expert opinion issued by the narcological commission.

However, in contradiction to the legal provisions, many municipalities in the Republic of Moldova have not established social issues commissions, and police referrals are frequently redirected to other local committees whose competences do not align with the regulated mechanism. Even in jurisdictions where such commissions formally exist, the implementation of legal provisions is rare or entirely absent, thereby undermining the effectiveness of mandatory treatment and early intervention in cases of alcohol abuse among minors.

Another relevant aspect addressed in this study concerns traditional practices harmful to children's health, perpetuated by ambiguous regulations or cultural permissiveness regarding alcohol distribution. According to Articles 91 and 355 of the Contravention Code of the Republic of Moldova [10], the sanctions for alcohol consumption in prohibited places or appearing intoxicated in such locations, do not establish clear blood alcohol concentration thresholds, nor is the alcohol content of the ingested beverage specified. This omission allows for subjective interpretations, resulting in tolerant attitudes in practice, particularly toward certain types of alcohol – especially wine.

Indeed, a widely held belief persists among the population that wine is not a true alcoholic beverage, but rather a nutritional product with beneficial properties. This perception is reinforced by Article 2 of Law No.57/2006 on Vine and Wine [11], which defines wine as a food product and homemade wine as a beverage intended for personal family consumption. Such classifications create confusion and undermine efforts to curb alcohol consumption among minors – particularly in rural areas, where wine is often offered to children "just to taste".

Additionally, Law No.1100/2000 on the Manufacture and circulation of ethyl alcohol and alcoholic products [12], excludes wine and products obtained from must from its scope, emphasizing exceptions for homemade alcoholic production, provided the beverages do not exceed 25% alcohol by volume. As a result, the current normative framework inadvertently facilitates minors' access to alcohol, especially in households where wine is produced artisanally.

A correlative analysis of legal provisions and statistical data reveals that, although legal access to alcohol by minors is theoretically restricted, numerous loopholes and legal ambiguities persist in practice, enabling uncontrolled access to alcohol consumption.

It is important to note that this article does not explicitly address the rate of alcohol intoxication incidents among minors, whether occurring in family settings or in public spaces. Although such cases are occasionally reported in the media or by authorities, no comprehensive official analyses exist regarding the frequency and severity of these events—an omission that represents a significant gap in the proper assessment of the phenomenon.

Conclusions. The multidimensional analysis presented in this article has demonstrated that alcohol consumption constitutes a major criminogenic factor among minors,

with direct implications for the phenomenon of juvenile delinquency in the Republic of Moldova. According to statistical data provided by competent authorities, although a general decrease in the number of offenses committed by minors was recorded in 2023, a significant number of cases persist in which alcohol use served as an aggravating or triggering circumstance for criminal behavior.

A key finding is that juvenile delinquency is not limited to children from socially vulnerable or disorganized families, but also affects minors from intact and seemingly stable family environments, which necessitates a comprehensive and inclusive approach in prevention policies. Furthermore, more than 500 referrals sent to local social commissions for mandatory alcohol detoxification treatment did not result in any known outcome, indicating structural deficiencies in the enforcement of the existing legal framework.

From a legislative standpoint, the comparative analysis between Law No.338/1994 and Law No.370/2023 on the rights of the child reveals a reduction in the normative clarity regarding the prohibition of certain harmful behaviors, such as initiating minors into alcohol use. This legislative regression highlights the urgent need for legal revision in accordance with the principles set out in the UN Convention on the Rights of the Child.

Moreover, culturally tolerant practices, such as offering wine to minors in family settings, are indirectly reinforced by the legislative ambiguities present in the Vine and Wine Law No.57/2006 and Law No.1100/2000 on the manufacture and circulation of ethyl alcohol. In addition, the Contravention Code does not establish a clear standard regarding relevant alcohol concentration for the application of sanctions, thereby weakening their legal effectiveness.

Another problematic aspect concerns the deficiencies in institutional infrastructure – in many municipalities, social commissions do not exist, and where they do function formally, the provisions on mandatory treatment for minors with alcohol problems are rarely or never enforced.

In conclusion, in order to effectively reduce the incidence of delinquent behavior among minors associated with alcohol consumption, the following actions are necessary:

• Revising the legislative framework, with a focus on clarifying and strengthening measures prohibiting the initiation of minors into alcohol use;

• Strengthening institutional intervention mechanisms, by ensuring the effective operation of local social commissions;

• Promoting a coherent educational framework, grounded in the "Health-Promoting Schools" network, and expanding it nationally with mandatory implementation;

• Efficiently monitoring the enforcement of sanctions and rehabilitation measures;

• Conducting targeted awareness campaigns for parents and communities, aimed at dispelling myths about the "harmlessness of wine" and reducing cultural tolerance for alcohol use among minors.

Only through systemic, interinstitutional and evidence-based approaches we can ensure effective control over this major criminogenic factor and create sustainable conditions for child protection and the reduction of juvenile criminality.

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USE OF INFORMATION FROM OPEN SOURCES AS RESEARCH MEASURES IN INVESTIGATION OF ILLICIT TRAFFIC OF CULTURAL GOODS

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"*He who owns information owns the world*" [1].

Summary

The collection of "information" from open sources comes mainly from the Internet, but also from mass media, such as television, and regrettably less from newspapers, magazines and radio. At first, the analysis of information was based on the use of these sources as a "supplement" to the traditional analysis based on classified data, and the systematic collection of information from open sources was not a priority for the intelligence communities.

However, in recent years, significant changes in international social life have increased interest in exploring open sources. The importance given to this information has increased considerably over time, largely due to technological advances, but also due to the fact that it's efficient management has highlighted elements that have transformed the activity of specialized services. The transformation of information from open sources into useful capabilities is the main stage, achieved through specific methods. Technology plays an essential role, given the large volume of information available, and the isolation of relevant ones is essential in this process. This step is part of a broader analysis process, and the information obtained from open sources, after being filtered and extracted, is correlated with other data obtained through other sources.

Keywords: Open-Source Intelligence (OSINT), objects of historical value, databases of personal data, posts and communications of sales, social networks, cultural goods, artificial intelligence.

Introduction. Trafficking in cultural goods in "definition" is the illicit import, export, and transfer of important items of unprecedented significance to archaeology, history, literature, art, or science [2]. One of the hallmarks of illicit trafficking in cultural goods is the ability to incorporate into the legal marketplace. Stolen objects of historical or cultural value can easily be introduced into the supply chains of the market, making it extremely complicated to distinguish them from cultural goods from legal sources. In this 'grey' market, the interaction between legitimate actors and criminals often takes place online, which exacerbates the difficulties in investigating this type of crime. In this

respect, social network analysis (SNA) can be a valuable tool to understand how criminal networks operate and what relationships exist between the actors involved in these networks. Given the widespread use of social media to trade stolen cultural goods, one way to obtain relevant data for NAS analysis is through open-source intelligence (hereinafter OSINT - Open-Source Intelligence). Web scraping techniques and crawlers can facilitate the collection, evaluation and analysis of data from public sources such as websites, social media platforms and other databases, providing valuable information to identify traffickers and trafficked objects. However, the use of these tools poses significant challenges.

The purpose of the article is to turn open source information into an effective tool to combat illicit trafficking in cultural goods, considering both the technical benefits and the importance of protecting human rights and respecting ethical norms in the collection and use of data. At the same time, the purpose of this article is to examine the role, impact and usefulness of open source information (OSINT), as research measures in investigating illicit trafficking of cultural goods, as well as to improve the efficiency and accuracy of the processes of identifying, tracking and combating criminal networks operating in this field. The use of this information allows law enforcement authorities to obtain data from public sources, such as websites, registers, social media platforms and online forums, which are often used for the illegal trading of cultural objects.

As the main purposes of using this information will be included:

– *Identification and location of traffickers*: Through which open sources provide the opportunity to discover the relationships and links between traffickers, collectors or illegal intermediaries by analysing their behavior on online platforms.

– *Follow-up of illegal transactions:* Monitoring social networks and other online platforms that will help identify offers to sell or exchange stolen cultural objects, making it easier to intercept and prevent trafficking.

– *Increasing the transparency of investigation processes:* By using OSINT, authorities can collect public evidence that can be used in a transparent and verifiable manner, building public trust in efforts to fight organised crime.

– *Discovering new criminal routes and networks:* Social Network Analysis (SNA) techniques can be used to better visualize and understand the structure of cultural goods trafficking networks, identifying key actors and vulnerabilities.

– *Real-time data collection:* Open source information allows for constant updating of data and rapid detection of new trends or changes in illicit trafficking strategies for cultural goods.

Methods and materials applied. Methods have been used in the preparation of this article: comparative analysis, analyzing the information and sources of information used in the operational activity of the General Police Inspectorate (GPI) of the Ministry of Internal Affairs, a body specialized in the investigation of offenses and contraventions, as well as criminal prosecution, prevention of offenses and contraventions, as well as ensuring the achievement of justice, and so on [3]. At the same time, the paper combines an analysis of the academic literature and a qualitative analysis of surveys among law enforcement authorities, especially, such as, specialized entities within the Ministry of Internal Affairs GPI that use different software programs.

Discussions and results obtained. Returning to the concept of information, we will continue to address the classification aspects of information, in order to delineate the field of analysis necessary for the radiography of information from open sources.

Thus, according to the explanatory dictum, the information represents the DEX Definition: Information s.f. 1) news, communication: clarification on someone or something; all information and documentation material; source; 2) central notion of the theory of communications and cybernetics, designating the new elements in relation to the prior knowledge, contained in the structure of a message, in the meaning of a symbol. Theory – mathematical theory of the general properties of information sources, transmission channels and information storage and processing facilities, etc. [4].

Another approach to this definition is found on the government site which defines open datasets as "open data is a collection of data published and managed by an entity that is available for access and downloaded in one or more formats" [5].

According to the literature that provides a classification of information according to various criteria, we have concluded that, in general information is classified according to several criteria, namely:

- Area of interest (political, economic, military, etc.);
- Type of information (raw, basic, circumstantial, estimative, real-time, finite, etc.);
- Source of collection (human sources, technical sources, open sources, etc.);
- Level of action (strategic, operational, tactical);
- Classification level (classified, unclassified);
- Statehood (internal and external);
- Information of forensic significance (data relevant for criminal investigations).

Thus, that classification calls into question an important feature of open source information – their name comes from the collection source. This feature helps us define open source information called Open-Source Intelligence (OSINT) as the process of identifying, collecting, comparing, processing, and disseminating information from public sources called open sources.

In turn, according to the degree of accessibility to information, open sources (OSINT) can be classified into:

- Sources with unlimited access and commercial sources (Internet);
- Media (traditional sources);
- Legal and ethical information, distributed through specialized channels, such as research papers, manuscripts, reports, technical documents, speeches and commercial photographs ('grey' literature);
- Observers, researchers, etc. (human sources) and Commercial satellites.

Exploitation of open sources can sometimes involve direct contact with individuals such as officials, librarians, investigative journalists, reporters accredited to government institutions and employees of non-governmental organizations [6, p.193].

According to the concept 'information of forensic significance' by a short definition is defined as data and information about the offence, but also other types of information that can be used to detect and discover the offence. The effectiveness of investigations and prosecutions depends directly on the volume and quality of information about the crime and the offender.

With regard to the sources of information with forensic significance for the purpose of discovering crimes, in the works of forensic scientists, they are defined as material objects, which contain information about the circumstances of committing the crime and can be classified into real and ideal sources. Such a classification is presented by the authors Vasiliev A. and Yablokov N. who consider that the real sources of information con-

stitute material objects, in the broad sense of the word, and the ideal sources represent the persons who interact with material objects, the perpetrators of the criminal act, their subjective reflections and memories. Sources that can be assigned to a single classification category are also referred to as simple sources of information, and those that reflect both actual and ideal sources are referred to as complex [7, p.144].

According to other Russian forensic scientists such as Polevoi Nicolae and Saltevski Mihail, the notion of 'information with forensic significance' is extensively investigated, which in turn defines forensic information as data describing the crime, its elements, traces left, as well as methods of identifying them.

At the same time, in the opinion of another researcher, university professor Golubenco Gheorghe, researching information with forensic significance, mentions its importance in the investigation of criminal activities. In his view, the links and interdependence between information with forensic significance make it possible to obtain a broad picture of the forensic features of the offence, while generalizing information about the offence in the context of complex studies of a representative number of such cases, form the forensic characteristic or the information model of certain types and categories of offences [8, p.87].

Another classification of information sources, including those used in the investigation of crimes, is the subject of analysis and specialized Romanian publications. Thus, the Romanian expert Savin M. considers that according to accessibility the sources are divided into:

- *Open sources*, which are information available to the general public, including "grey literature" (technical documents, research, economic reports, scientific papers and articles, etc.). A challenge is to assess the correctness of this information, as information available from open sources can often be biased, incorrect or sensational.

- *Closed sources* are information collected for a specific purpose, with limited access to the general public (databases with personal data, those through which obtaining such data requires special authorization, etc.). In the field of information analysis, these databases will often include personal data, data on convicted persons, vehicle registration data, weapons permits, art collection holders, and so on.

In turn, these closed sources of information with limited access to the general public, by classification level, are categorized into:

• *Classified sources*. Information with various levels of classification, collected by specialized personnel. The use of these classified sources of information may increase the quality of the investigation carried out and may significantly reduce access to the results of the investigation for third parties.

• *Unclassified sources* . Information collected by the institutions in the current activities and specific to the specialization, such as criminal investigation, contraventional data, issuance of documents (weapon permits, criminal record, export certificate for cultural goods, notifications of import of cultural goods, certificates of filing, etc.) [9, p.65].

Another classification by methods, means and sources of collection can be found in the approach of the Romanian scientist Nitu Ionel, who presents another classification of information sources, maintaining the following classification:

• OSINT (Open Source Intelligence): open, public, unregulated access sources (collection of information from open, public, unregulated, official or officious sources);

• HUMINT (Human Intelligence): use of secret human sources;

• SIGINT (Signals Intelligence): interception and analysis of electronic communications (collection of information through interception and analysis of electronic communications and other emissions, which require technical resources);

• IMINT (Imagery Intelligence): photographs and images from satellite and airplane (collection of information through the use of photography and images from satellite and airplane, exploitation of infrared sensors, lasers, electronic optical devices);

• PHOTINT (Photographic Intelligence): collection of information through photo-video surveillance;

• MASINT (Measurement and Signals Intelligence): analysis of data from technical sensors (obtaining information from the analysis of data from specific technical sensors (e.g. radio frequencies) in order to identify reflected or emitted characteristics associated with the transmitter or sender);

• Acoustic Intelligence (ACINT): acoustic data processing;

• COLINT (Cooperation Liaison Intelligence): liaison and cooperation activities;

• COMINT (Communication Intelligence): interception of communications and data transmissions (sometimes part of SIGINT), (collection of information through interception of communications and data transmissions (sometimes addressed as part of SIGINT);

• ELINT (Electronic Intelligence): technical and geolocation information from electromagnetic radiation (obtaining technical and geolocation information from electromagnetic radiation);

• RADINT (Radar Intelligence): information obtained by radar [10, p.37];

• ANAINT: obtaining new information through intelligence analysis (obtaining new information by performing intelligence analysis, given that the final product does not resemble its component parts and acquires new meanings). Experts from the United Nations Office on Drugs and Crime (UNODC), shall classify sources of information for the analysis and investigation of criminal offences into: open sources, closed sources and classified sources [11, p.18].

This institution stresses the importance of including both accessible sources and those that require special procedures in order to be exploited through certain special procedures.

The use of open sources in documentation, research, trafficking of cultural goods provides a significant opportunity to identify and locate traffickers of cultural goods by analysing their behavior on online platforms. Monitoring online marketplaces, social networks, online auctions and financial flows can help uncover relationships between traffickers, collectors, intermediaries, beneficial owners as well as increasing the transparency of investigation processes, discovering new routes and criminal networks, collecting real-time data thus helping to combat illicit trafficking in cultural goods. By using advanced image recognition technologies, artificial intelligence, geospatial location and data analysis, authorities can uncover complex criminal networks and protect global cultural heritage [12, p.125].

Detecting and locating persons involved in the illegal trafficking of cultural goods is essential to protect artifacts and heritage objects. The use of publicly available information (OSINT) can offer significant advantages in this respect, enabling the swift identification of trafficking networks, their location and the analysis of criminal activity on various online platforms.

Thus, OSINT provides the authorities with valuable data to trace legal and illegal

routes and identify the persons involved. Analysis of open sources, in particular the online behavior of traffickers, collectors and intermediaries, can reveal the relationships and links between them. OSINT becomes an effective tool in discovering these connections.

In turn, law enforcement bodies to identify and locate traffickers of cultural goods by using information from open sources go through the following ways:

1. Monitoring and analysis of social networks, open sources, digital archives and user behavior.

2. Monitoring of online marketplaces and sale/purchase platforms.

3. Use of image recognition technologies, artificial intelligence (AI), data analysis, as well as machine learning algorithms.

4. Monitoring of craft, black markets and auction transactions.

1. Monitoring and analysis of social networks, open sources, digital archives and user behaviour. Social networks are often used by traffickers to promote and sell cultural goods. By analysing the activities and relationships in these networks, authorities can discover links between individuals and groups involved in the trafficking of cultural goods. In turn, the use of this stage is an important source of information about traffickers of cultural goods as many traffickers use these platforms to promote and sell stolen objects, sometimes in the form of private offers or public announcements.

Tracking posts and communications of sales through social networks. Fictitious or actual traffickers, intermediaries or beneficiaries may post images of stolen art objects or other cultural goods on platforms such as Tik-Tok, Instagram, Facebook, Twitter, Pinterest, Tumblr, Flickr, Sina weibo or OK.ru, etc., in order to offer them for sale or promote them. These posts may include descriptions or hashtags linking traffickers to collectors or other traffickers. Analysis of these posts as well as image recognition algorithms can be used to detect stolen heritage objects or cultural goods, to compare them with existing databases and to identify criminal networks and links between trafficker, collector and intermediary.

Identification of accounts and locations and analysis of links between them. By analysing activity on social networks, authorities can track user accounts that are involved in the sale of cultural goods. Here traffickers or interposed people, collectors can be linked to each other through common photos, comments, likes, shares or direct messages. By analyzing these interactions, authorities can discover connections between individuals and track the routes of cultural objects. They can also analyze geo-specified locations of posts to determine the location of traffickers or criminal groups.

Detecting tracking groups and private messages. Most traffickers use private, encrypted groups on social networks, messaging apps to discuss, coordinate and sell cultural goods. Here the authorities can intervene with judicial consent to access, monitor these conversations and discover details about the traffic networks, the relationships between traffickers, intermediaries and collectors who most often use messaging applications such as Viber, WhatsApp, Telegram, Facebook Messenger, Signal, Pinterest, Tumblr, Flickr, etc., as well as some sites for sale purchase, www.999.md, https://makler.md/moldova/furniture-and-interior/all-for-the-comfort/antiques-and-work-of-art?list&currency_id=5&list=detail; https://www.farpost.ru /vladivostok/ hobby/buy; http://antiques.ay.by; https://raritet78.ru, or even Telegram, Instagram and Facebook, which are used to establish transactions, transfers, etc.

Geolocation of posts and images. Open source posts containing photos of stolen cul-

tural goods may be associated with the geographic locations of the sellers. This geolocation technology can be used to identify the provenance and transit locations of stolen items. For example, a photo of an art object published on an app or social network can be analyzed to identify the location where the photo was taken, providing clues about the person or group of people who are part of the criminal network involved in the crime.

Collection and analysis of data from the media. This stage is represented by the analysis and monitoring of news, media reports, press articles, interviews with various experts in the field that can be an important source of real-time information about the investigation and discovery of stolen cultural goods or about the criminal activities of criminal groups specialized in this field. Also, the identification of new trafficking routes and the networks involved, as a result of journalistic investigations carried out at national level of a country or internationally by a group of investigative journalists. The use of Natural Language Processing (NLP) algorithms can help to automatically extract data from press articles and investigative reports to detect keywords, places and individuals involved in illicit trafficking of cultural goods.

Access to public archives and international databases. The use of international databases such as the database of Interpol institutions (International Police Cooperation Organization)[13], Europol (European Union Law Enforcement Agency)[14], or UNESCO (United Nations Educational, Scientific and Cultural Organization)[15], which maintain databases accessible to the public or authorities, containing information on stolen cultural property, as well as other databases such as the OSCE (Organization for Security and Cooperation in Europe)[16], ICOM (International Council of Museums) [17]. Collecting real-time data from these databases can help identify and track stolen cultural goods in circulation.

Use of internet applications as a source and search engine for information about data, objects, etc. In the Internet Explorer Network users use different search sources depending on the country, people and restrictions applied internally, among which Google is most often used, followed by other search engines (Ask, Baidu, Bing, Excite, DuckDuckGo, Ecosia, YaCy-peer-to-peer search engine, Yahoo! and Yandex). Thus, these web browsers perform searches as a specialized search engine for images (Google Images, Incogna, PicFindr,Picsearch,Quality Image Search), Multiple Search Engine (Youtube), Map Search Engine (Google Maps, Open Street Map, WikiMapia) , Blogs Search Engines, Security/ Privacy Based Search Engines, P2P Search Engines, Torrent Search Engines.

At the same time, taking into account the objectives of the research, we have outlined in the search for information in order to obtain more search criteria, it is necessary to search the information according to the search engine, so that it is carried out according to individual characteristics as a nation, the interested country, for example: in Romania uses as a search engine (cichi.ro, address.ro, Decostores.ro, Furnio.ro, Okidoki, Biano, Favi, Hoome, Homedelux, google.ro, juris.ro); Russia (Rambler and Yandex); Arab World (Maktoob); Germany (Wayback Machine, Leo, Aladin, Yellowmap, Web, Bellnet, Suchmaschine); Denmark (Jubii); Switzerland (Search); South Korea (Kakao, Naver); China (Baidu, Qihoo360, Wayback Machine); India (Rediff); Iceland (Leit); Czech Republic (Seznam); Israel, Bangladesh, Belgium, Brazil, Canada (Wayback Machine); Italy (Virgilio); Japan (Biglobe and Goo); United Kingdom (Google UK, Lifestyle.UK, Yahoo! UK); South Africa (Ananzi); Portugal (Aeiou and SAPO); Slovenia (Najdi); Sweden (Eniro); USA (Wayback Machine, AOL Search, Bing, Business, Excite, Google, Lycos, What-U-Seek, Yahoo!

and Ziplocal); Vietnam (Coccoc); Hungary (Minner); and Canada (Searchcanada, Canada, Ziplocal, Wayback Machine) [18].

In our search for information, we use keywords and descriptions. Thus, the search engine uses search algorithms that can analyse the titles and descriptions of objects on sales websites to detect terms indicating illegal provenance, such as 'antique', 'antiquity', 'stolen art' or 'illegal antiques', etc. These signals, words, etc., can help identify objects and networks that traffic cultural goods.

2. *Monitoring of online marketplaces and sale/purchase platforms*. Lately, traffickers, sellers, buyers, etc. of cultural goods in order to keep their anonymity use different ways of trading money so that illegal/suspected transactions with cultural goods are often carried out on online marketplaces, encrypted platforms, which may include auction sites, e-commerce platforms and social networks. By following the behavior of sellers and buyers of cultural goods, relationships between traffickers, collectors and intermediaries can be identified. Analysing sales behavior on these platforms is essential to locate traffickers. This monitoring of the online market and of the sale/purchase platforms is carried out in several stages:

• *Identification of sellers and buyers*. At this stage, you use search algorithms to identify suspicious ads and offers for the sale of cultural goods, antiques or rare objects. Monitoring online sales/purchase platforms, such as e-commerce platforms, e-shops, eBay, Etsy, AliExpress, Alibaba, Makler, 999, etc., can be monitored to observe sellers who frequently offer cultural goods. By analyzing the descriptions and photos posted by the sellers, it can be identified goods that have been reported as stolen or that match lost heritage objects. If these transactions are similar or relate to heritage items or antiques, this may indicate a criminal network;

• *Analysis of selling/purchasing behavior*. Once a suspect (trafficker, middleman) is identified on an online platform, which displays the same type of products across multiple platforms can be part of a larger network, authorities can track user accounts to find additional information about other suspicious sales, or other platforms used to market stolen goods. If they have similar behaviors (e.g. they use the same accounts to sell handicrafts or antiquities across multiple sites), this may indicate links between traffickers;

• *Identification of prices and descriptions of the object of sale*. Machine learning algorithms can detect sales patterns and specific objects, like repetitive transactions or sales of similar art items. Comparing sales prices and types of goods can reveal suspicious transactions and help build a picture of the traffic network. At the same time, the prices and description of the sold items can provide important clues. Sometimes, traffickers may try to disguise the illegal nature of objects by changing the name or a vague description;

• *Tracking auction platformer and online sales websites*: Many stolen items are sold on illegal auction platforms or websites where traffickers hide the identity and provenance of their goods. Law enforcement agencies can monitor these sites to identify illegal sellers and intercept suspicious transactions by using tracking and monitoring software on these platforms to uncover suspicious transactions;

• *Use of bots and automated tools*. It uses automated programs and scripts that can scan in real time different sites, URLs and networks to identify suspicious posts on the sale of cultural goods. These tools can analyze the description and images of objects, comparing them with the global database of stolen artifacts.

3. *The use of image recognition technologies, artificial intelligence* (AI), *data analysis, as well as machine learning algorithms*. The use of advanced technologies of artificial in-

telligence, software, etc., image recognition and data analysis can help identify patterns of criminal behavior, stolen cultural goods, predict illegal transactions and track them through open sources.

Comparison, recognition of images and documents with the database of stolen artifacts. Image recognition technology can compare the photos posted by traffickers with existing national and international databases of stolen cultural goods such as:

• Interpol's NCO database: also maintains a global database on stolen cultural goods, which helps locate them. Interpol facilitates the exchange of information between police forces in different countries, helping to identify and arrest traffickers of cultural goods;

• UNESCO database: plays an important role in preventing trafficking of cultural goods and coordinating international efforts to trace illegal transactions. It provides educational resources and programmes to combat the illegal trade in artifacts and works of art;

• Europol (the European Crime Authority): this entity helps European authorities to investigate illegal transactions of cultural goods through common databases and coordinated actions between Member States.

These databases help authorities to verify the provenance of goods and identify criminal networks operating internationally. In the future, work is underway on a new platform, expected to be launched in autumn 2025, called RITHMS (Research, Intelligence and Technology for Heritage and Market Security), which is a project funded by the European Union under the Horizon Europe Research and Innovation Programme (Agreement No.101073932), aimed at developing an AI-based platform using SNA and OSINT to investigate networks trafficking in cultural goods. This process can lead to the discovery of stolen objects and the identification of their source, i.e. the traffickers who sell those [19].

Analysis of data from multiple sources (also called *big dataanalysis*). Machine learning algorithms can analyze large amounts of data from various open sources and identify common behavioral and unusual trading patterns that suggest the existence of traffic networks. These algorithms can detect if a trafficker is selling the same items across multiple open online sales platforms and social networks.

Databases of provenance. Many organizations retain information about the provenance of art objects and culture, as well as their previous transactions. These sources can be constantly monitored for suspicious exchanges of cultural goods. As open sources, these databases include the Register of cultural goods destroyed, stolen, missing, removed or illegally introduced in the Republic of Moldova, as well as those recovered, the Register of national mobile cultural heritage, and other registers managed by the Recording and Movement Service of movable cultural goods subordinated to the Ministry of Culture of the Republic of Moldova [20].

According to neighboring countries, in Romania information about movable cultural goods destroyed, stolen, missing or illegally exported is reflected in the database maintained and managed by the National Institute of Heritage [21], and the Institute of Cultural Memory ensures the administration of the database of the Register of cultural goods destroyed, stolen, missing or illegally exported and the archiving of files from the Ministry of Culture and Cults [22], as well as in Ukraine where such evidence is brought by the Ministry of Culture and the Strategic Communication of Ukraine [23].

4. *Monitoring of craft, black markets and auction transactions*. Some of the most common places where illegal transactions of cultural goods take place are black markets and illegal auctions. At the same time, these stolen cultural goods can be traded through

public auctions or craft markets, and their monitoring can help locate traffickers. The following points are used as a tool to investigate, monitor and detect trafficking in cultural goods by law enforcement authorities:

• *Examination of local craft markets*. In some cases, traffickers sell stolen cultural objects on local craft markets. Monitoring these markets, in collaboration with local and national authorities, can help locate cultural goods trafficking networks;

• *Human sources (HUMINT)*. Information from human sources is essential in discovering networks of traffickers as well as establishing the place where traffickers, sellers, etc. meet, black markets, cultural goods for marketing purposes, etc.;

• *Analysis of national tenders.* Traffickers of cultural goods often use money laundering methods to conceal the illicit origin of objects. In this respect, the tracking of financial transactions may reveal links between traffickers and their financial networks.

• *Analysis of international tenders*. Transactions of cultural goods taking place in international auctions, such as those organised by famous auction houses (Sotheby's, Christie's), can be monitored for goods originating from illegal sources. Authorities can compare lists of auctioned objects with databases of stolen goods to identify artifacts that are sold illegally.

Conclusion. Identifying and locating traffickers of cultural goods through the use of open source information are key activities in investigations aimed at combating illicit trafficking. By monitoring open sources as – analyzingsocial networks, user behavior, monitoring the online market and sale/purchase platforms, using image recognition technologies and data analysis, monitoring craft, black and auction markets, as well as tracking financial transactions – through international collaboration authorities can identify and locate traffickers and help recover stolen cultural goods. These measures not only support the protection of global cultural heritage, but also strengthen international cooperation in the fight against cross-border crime.

At the same time, open source information has proven to be extremely useful for investigating illicit trafficking in cultural goods, as it is conclusive and pertinent to the main characteristics of this form of crime. The fact that the legal and illegal trade in cultural goods appears to have moved online, with interactions taking place on markets and social media, facilitates the possibility to collect publicly available data necessary for the purposes of OSINT. With this information, it is possible to carry out NAS, in order to dismantle traffic networks, by exposing the links between legal and illegal actors operating in this grey market. Both NAS and OSINT can currently be carried out by AI systems that allow extracting and crawling large amounts of personal data and finding correlations between different data sources to produce results. These results can then be used by law enforcement authorities to support the investigation of crimes and can even be used as evidence for court convictions.

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USE OF ELECTRONIC EVIDENCE IN CRIMINAL PROCEEDINGS: CHALLENGES FOR UKRAINE AND EU EXPERIENCE

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Summary

The thesis examines the legal nature of electronic evidence in the criminal procedure of Ukraine, in particular, the problems of admissibility, reliability and relevance of this evidence. The author analyzes the problematic aspects of their use at the pre-trial stage and compares the approaches to electronic evidence in the European Union. Special attention is paid to the need for regulatory improvement and implementation of European standards in the field of digital justice.

Keywords: electronic evidence, criminal procedure, pre-trial investigation, investigative (detective) actions digital forensics, pre-trial investigation, international experience, EU experience.

Introduction. In recent years, digitalization has been penetrating all areas of life, and criminal justice is no exception. Criminal activities are increasingly carried out with the use of information and communication technologies, and thus, traces of such activities remain in the digital space. Accordingly, the number of criminal proceedings in which electronic evidence plays a key role is growing: data from messengers, e-mail, surveillance video, GPS tracks, cloud archives, etc.

At the same time, Ukraine's law enforcement practice faces numerous difficulties, from imperfect legislative regulation of electronic evidence, to the lack of unified procedures for its collection, preservation and examination. Equally important are the problems of ensuring the authenticity, integrity and admissibility of digital materials in criminal proceedings.

In this context, the experience of the European Union which has already developed appropriate legislative and practical mechanisms for dealing with electronic evidence is extremely valuable. Its adaptation to Ukrainian realities can significantly increase the efficiency of pre-trial investigation and ensure the rights of participants in the criminal process and the compliance of justice with modern digital challenges.

1. The concept and legal nature of electronic evidence in the Criminal Procedure of Ukraine. The concept of "electronic evidence" appeared in the criminal procedure leg-

islation of Ukraine relatively recently – with the amendments to the Criminal Procedure Code in 2018.

Currently, the shortcomings of the current criminal procedure legislation include the lack of an official definition of digital (electronic) evidence. At the same time, there is a situation where legislative acts regulating activities in other areas of judicial proceedings in Ukraine contain such a definition. Thus, the Code of Administrative Procedure of Ukraine, the Commercial Procedure Code of Ukraine and the Civil Code of Ukraine define the term "electronic evidence". According to Article 99 of the Code of Administrative Procedure of Ukraine, the relevant concept is defined as information in electronic (digital) form containing data on circumstances relevant to the case, in particular, electronic documents (including text documents, graphic images, plans, photographs, video and sound recordings, etc.), websites (pages), text, multimedia and voice messages, metadata, databases and other data in electronic form. Such data may be stored, in particular, on portable devices (memory cards, mobile phones, etc.), servers, backup systems, and other places where data is stored in electronic form (including the Internet).

According to part two of Article 84 of the CPC of Ukraine [1], procedural sources of evidence includes testimony, material evidence, documents, and expert opinions. Digital (electronic) evidence in the criminal procedural legislation of Ukraine is a type of document. In particular, according to paragraph 1 of part 2 of Article 99 of the CPC of Ukraine, documents include: "materials of photography, sound recording, video recording and other information carriers (including computer data)". Electronic evidence means any data in electronic (digital) form containing information about the circumstances to be proved in criminal proceedings. This includes, in particular, text documents, images, video and audio files, metadata, data from e-mail, messengers, websites, etc.

The essential feature of electronic evidence is its intangible nature: it does not exist in physical form, but is stored on electronic media that can be technically manipulated. Such data can be easily copied, modified or deleted without leaving any obvious traces, which makes it difficult to identify and verify them in the process of proof. In addition, digital data is not self-sufficient: its origin, integrity and relevance to the circumstances of the case must be confirmed by additional technical and procedural measures.

It is these properties – fragility, changeability, dependence on the technical environment – that determine both the potential of electronic evidence for investigating modern crimes and, at the same time, the need for a special legal regime for their circulation. As N.R. Husiak rightly notes, "electronic evidence is a special type of evidence that requires comprehensive legal regulation, covering not only the issues of form, but also methods of obtaining, recording, storage and authentication" [2].

For the effective use of electronic evidence in criminal proceedings, it is necessary not only to recognize it as a separate type of evidence, but also to create clear, detailed rules for its circulation – from detection and recording to the process of judicial assessment of its admissibility.

Unlike traditional physical evidence, electronic data requires a special recording procedure to ensure that its integrity and authenticity are preserved. This includes, in particular, the use of hash functions, logging of actions during access to electronic media, recording of metadata, etc. In practice, however, there are often situations when evidence is submitted in the form of screenshots or uncertified copies, which casts doubt on its probative value.

The legal nature of electronic evidence requires a rethinking of traditional approaches to the evaluation of evidence in criminal proceedings. The court must take into account not only the content, but also the way the information was obtained, the availability of technical expertise, authentication, and its relation to a particular person or event. The absence of a detailed procedure for handling such evidence in the CPC creates a gap that is often filled by case law or departmental instructions.

2. Legislative regulation of electronic evidence: Problems of the current model. Despite the existence of a general definition of electronic evidence in the CPC of Ukraine, the legislative regulation of its circulation remains superficial and fragmented. In addition to Article 84, which enshrines the basic concept, electronic evidence is mentioned in Article 99 (documents), Article 100 (storage of material evidence and documents and decision on special confiscation), as well as in passing – in the context of investigative (search) actions, covert investigative actions and measures to ensure criminal proceedings (e.g., inspection, temporary access to things and documents, seizure) [1].

It is necessary to recognize the correct opinion of Karaman I.V., however, that "the peculiarity of electronic evidence is its vulnerability to change and difficulty in confirming authenticity, which requires a special procedural regime and the participation of digital forensics specialists" [3].

Identifying sources of electronic evidence is also problematic. For example, can correspondence in a messenger without confirmation of its origin (IP address, login logs, user ID) be admissible as evidence? In practice, the answer depends on the position of a particular court, as the law does not contain admissibility criteria for digital data.

In the current environment, there is a growing need to supplement the CPC with separate procedural rules for dealing with electronic evidence. In particular, it is advisable to introduce a new chapter or a special section that would enshrine the following elements: procedure for seizure of digital evidence; mandatory preparation of a recording protocol with technical parameters; mandatory use of digital identification tools (hash algorithms); terms and conditions of storage of electronic media; participation of a specialist or expert in case of data seizure and copying.

The absence of appropriate regulatory detail also complicates the preparation and conduct of forensic examinations, which are often the only way to confirm the authenticity and reliability of digital information. Therefore, improving the legal framework should be a priority in reforming criminal procedure in the digital age.

3. Case law on electronic evidence: Problems of admissibility and evaluation. One of the central issues that arise in the context of the use of electronic evidence is its admissibility in court proceedings. Unlike traditional material or written evidence, electronic data can be altered or falsified without leaving any visible traces, which makes their legal assessment much more difficult.

The analysis of court practice shows that there are no uniform approaches to the recognition of electronic evidence as admissible in criminal proceedings. As noted by A.M. Angeleniuk notes, "the court, when evaluating electronic evidence, fills in the relevant gaps through the already established precedent, which is based on legal norms (which, albeit fragmentarily, enshrine the use of electronic evidence in criminal proceedings), as well as analogy of law" [4].

This situation gives rise to significant variability in law enforcement practice. In particular, some courts recognize screenshots of email correspondence in messengers

(e.g., WhatsApp or Telegram) as proper and admissible evidence if they are accompanied by an expert opinion or confirmation by the user of the relevant account. Other courts reject similar evidence due to the lack of confirmation of technical authenticity, inability to establish the original source of the data or clear identification of the person who made the communication.

The decision of the Supreme Court of 06.10.2021 in case No.754/9711/20, states that an email can be recognized as admissible evidence only if it is established that the email address belongs to a specific person, as well as the structure of the message and metadata are preserved [5]. This indicates the need not only to record the document itself, but also to confirm its technical parameters.

Another problematic issue is the "transfer" of electronic evidence to tangible media, such as printouts of correspondence or videos. Case law indicates that it is necessary to submit the original electronic file or a copy of it with a digital signature, hash amount or expert confirmation.

In addition, courts often point to violations of procedural requirements when collecting electronic evidence. In such cases, even objectively reliable information is not recognized as admissible. This once again emphasizes that the formal correctness of the actions of the party submitting the evidence is of key importance for its acceptance by the court.

Thus, the analysis of court practice shows that the admissibility of electronic evidence depends not only on its content, but primarily on the method of its receipt, recording and accompanying procedural documentation. The formation of a unified law enforcement practice is possible only if the relevant procedures are detailed in law and the forensic examination of digital materials is widely introduced.

4. *Technical and organizational challenges at the Pre-Trial Investigation Stage.* One of the most problematic aspects of using electronic evidence is the pre-trial stage, when the proper collection and preservation of digital data determines their further evidentiary value in court. Unfortunately, many pre-trial investigation agencies currently face an acute shortage of both technical resources and the appropriate qualifications of their staff.

Investigators often do not have access to licensed software capable of performing a "clean" copy of digital information with the fixation of a hash amount. Not everyone has the skills to work with metadata, system logs, and backups. The lack of digital forensics specialists in investigative units significantly complicates the procedure for seizing and recording digital media.

Another problem is the formal approach to drafting procedural documents. Protocols for the inspection of electronic media often do not contain a full description of the actions performed with investigative equipment, do not specify access parameters, and do not indicate the programs used. Such documents do not stand up to scrutiny in court and become grounds for declaring evidence inadmissible.

In addition to the technical side, there is also an organizational barrier – the lack of methodological recommendations, internal instructions, and coordination between investigators, prosecutors, and forensic experts. Cases involving digital evidence are often delayed due to the need to re-seize data or order additional examinations.

In the context of growing cybercrime, these issues are becoming particularly relevant. Failure to respond promptly and correctly to digital traces of a crime means losing

important evidence. That is why the pre-trial investigation requires not only resource reinforcement, but also a systemic transformation of approaches to electronic evidence as a separate type of procedural activity.

5. *Experience of the European Union countries in regulating the circulation of electronic evidence*. The European Union countries use different models of working with electronic evidence, adapted to the specifics of their legal systems and technical capabilities. Let us consider specific examples that may be useful for the Ukrainian legal system.

In Germany, the basic principles for the handling of evidence, including digital evidence, are set out in § 94-98 of the Criminal Procedure Code. However, more detailed technical procedures, such as the use of hash functions, the creation of specialized technical protocols (*Protokoll der Sicherstellung*), as well as encryption and data protection, are regulated by the guidelines of the Federal Office for Information Security [6]. This approach helps to ensure a high level of reliability and security of digital evidence.

In France, the provisions on electronic evidence are set out in Articles 56, 76 and 97 of the Code of Criminal Procedure [7]. At the same time, certain technical procedures, such as the recording of electronic traces in accordance with the international standard ISO/IEC 27037:2012, are defined by additional bylaws and internal recommendations of law enforcement agencies [8]. This allows for a clear and prompt response to the practical challenges of digital forensics.

Of particular interest is the experience of Estonia, which has implemented a fully digital format of criminal proceedings in the E-toimik system [9]. This system ensures full transparency of digital evidence circulation, allowing investigators and judges to easily control access to materials using digital signatures and detailed access logs. Such a practice could significantly simplify procedural procedures in Ukraine.

The application of these specific European practices could significantly strengthen the Ukrainian model of handling electronic evidence. In particular, the introduction of clear and detailed procedural standards, the involvement of qualified experts in the field of digital forensics, and the creation of modern electronic systems for the exchange of evidence would increase the efficiency and credibility of criminal proceedings.

6. *Proposals for improving the Ukrainian model of working with electronic evidence*. Given the specifics of electronic evidence, its technical vulnerability and its extremely high role in modern criminal proceedings, it is proposed to introduce a new Article 99-1 to the Criminal Procedure Code of Ukraine, which will clearly regulate the procedure for seizure, recording, storage and use of electronic evidence. Such an approach will avoid confusion with traditional documents already regulated in Article 99 of the CPC and will ensure an appropriate level of procedural guarantees.

Article 99-1 "*Peculiarities of seizure and recording of electronic evidence*":

Electronic evidence collected during criminal proceedings must be recorded, stored and transmitted in compliance with special technical and procedural requirements that guarantee its integrity, authenticity and admissibility in court.

Seizure of electronic media (computers, smartphones, servers, flash drives, etc.) is carried out with the participation of a specialist or expert in the field of digital forensics. The absence of such a specialist during investigative actions is a ground for declaring the evidence inadmissible.

Before the device is seized, it is preliminarily recorded:

- Taking photos and videos of the general view of the device;

- Recording the power-on status;
- Describing active applications and open files;
- Indicating the identification parameters of the device (serial number, MAC address, etc.).

Creating a "mirror" (bitwise) copy of the electronic medium is a mandatory step. Such a copy must be accompanied by a hash sum (MD5, SHA-1 or other) that certifies its authenticity.

The investigative report should include:
- Software used for copying;
- Software version;
- Method of copying (forensic cloning, logical copying, etc.);
- Obtained hash amounts and technical metadata.

The original electronic medium shall be stored in a sealed form in a specially equipped room with limited access.

The storage periods for the original medium and its digital copies shall correspond to the storage periods for other material evidence in criminal proceedings, but not less than until the court verdict enters into force or the criminal proceedings are closed.

In the case of cross-border collection of electronic evidence, international treaties of Ukraine or international conventions to which it is a party shall apply, subject to the provisions of this Article.

This initiative is also in line with the general logic of adapting the CPC of Ukraine to the challenges posed by the digital transformation of the criminal procedure and takes into account the practical needs caused, in particular, by the ratification of the Rome Statute and related reforms of the evidence system.

Conclusions. Electronic evidence has long ceased to be something unusual in criminal proceedings – it is now common practice. At the same time, how effectively they will be used depends not only on the level of technological development, but also on the extent to which the legal system is ready to meet new challenges. Today, Ukrainian criminal procedure legislation is not yet fully adapted to the realities of the digital age.

The digital transformation of criminal procedure in Ukraine is not just a buzzword, but an urgent need that requires a systematic approach: from improving legislation to practical solutions in the work of law enforcement agencies and the judiciary. Only under such conditions will electronic evidence truly become a reliable tool for establishing the truth and ensuring justice in criminal proceedings.

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CONCEPTUAL-THEORETICAL ASPECTS IN THE CONTEXT OF STRENGTHENING THE NATIONAL SECURITY SYSTEM

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Summary

The conducted study focuses on the modernization process of the national security system of the Republic of Moldova, in a context marked by the country's integration into the European Union and current geopolitical challenges. This paper analyzes several aspects of the concept of security and its evolution, highlighting the significant transformations that have occurred in its understanding and application, as traditional threats, such as wars, have been complemented by emerging risks like migration, climate change, and geopolitical instability. The modernization of the national security system is seen as an ongoing process of adapting security structures and institutions to external requirements, especially in the context of European integration.

A key point of the research is the analysis of different theoretical schools, particularly the differences between the Western and post-Soviet views on security, with a focus on the importance of state security and its role in protecting the rights and interests of citizens. At the same time, the study emphasizes the complexity of national security, which can no longer be reduced solely to the military dimension, but must be understood in a much broader perspective, encompassing social, economic, and environmental aspects. In this regard, new theoretical approaches, including those promoted by authors like Barry Buzan and Dominique David, are essential for understanding security as a multidimensional concept, influenced by a variety of internal and external factors.

Finally, the research highlights the importance of aligning the national security system of the Republic of Moldova with European Union standards, a process that requires not only institutional and legislative adjustments but also a continuous adaptation to changes within the international security system. This modernization process, with an emphasis on individual protection and the promotion of a stable framework for democratic development, is seen as a crucial factor for the country's long-term prosperity and security.

Keywords: international security, international law, international relations, security studies.

Introduction. "Security consolidation" is a widely used term in the field of international relations, political science, and security studies, referring to the processes and measures through which a nation, region, or international actor strengthens its ability to prevent or cope with external and internal threats. In this context, security can be understood from multiple perspectives: military, political, economic, social and human. "Security consolidation" involves enhancing the capacities of a state or region to prevent, deter, and respond to threats, whether they are of a military, terrorist, political, or economic nature. It is a process that may include a variety of actions and strategies, ranging from the creation of efficient defense institutions to the development of a climate of political, economic, and social stability. In international relations, security encompasses the set of interstate relations that ensure global stability. In other words, international security represents the state in which countries are not threatened by wars or any violation of their sovereignty or independent development by other states. According to the UN Charter, the Security Council currently holds the primary mission of ensuring world peace, also

having the unique right to impose sanctions against aggressors. The idea of international security and its practical achievement is shaped by historical, economic, political, social, and other factors. The issue of security emerged with the formation of the state institution, always being closely linked to the issue of war and peace. Over time, there has been a shift in the capacity to analyze and identify security issues. Alongside this, both security policies and strategies in contemporary societies have undergone a process of transformation.

The issue of human, national, and international security, as well as the mechanisms through which the safety of individuals, communities, and states is ensured, has become an imperative in recent years. This is due to the diversification of threats and dangers in the international security environment, which, against the backdrop of technological changes, is constantly evolving. Security is a necessity that concerns us all, and the implementation of various security strategies at the national level requires a joint effort involving both military and civilian institutions, and, not least, the responsibility of the citizen. One of the necessary ways to increase the functionality of the security system would be to cultivate a strong security culture within society, consistently promoted among the population. This should be combined with the transparency of institutions authorized to ensure national security, as well as closer collaboration between specialized institutions, academic institutions, and experts from the private sector. Security culture is the final result of security education, including through continuous education, by promoting values, norms, attitudes, and actions related to the assimilation of the concept of national security. Security culture represents an important factor in the context of the current challenges to the national security of the Republic of Moldova [7].

"Security consolidation" is a concept that has evolved over time, in parallel with political, economic, and social changes on a global scale. From traditional concerns related to national security and territorial defense to contemporary challenges of global security, the process of security consolidation has undergone significant transformations.
Before the emergence of modern states, security was primarily a matter of defending communities and kingdoms. Security was not perceived at the state level but rather at the individual level or within small political units, such as tribes, city-states, or kingdoms. In antiquity and the Middle Ages, most societies protected their territories through fortifications, tribal wars, and local alliances. Security depended on the ability to protect borders and maintain internal order. In many cases, security and defense were linked to religion, with military orders (such as the Templars) playing an important role in the protection of sacred territories.

With the emergence of the nation-state in Europe and the evolution of principles of sovereignty and state independence, the concept of security began to be associated with territorial protection and national integrity. In the early modern period (15th-18th centuries), wars between European states were the primary reason for developing defense capabilities. Security measures involved national armies, fortifications, and strategies for border defense. Following the Treaty of Westphalia (1648), which laid the foundations of the modern international order, the idea emerged that each state has sovereign rights over its own territory and population. Thus, security became closely linked to the protection of the state from external attacks.

The 20th century brought fundamental changes in the understanding of security, mainly due to the world wars and technological revolutions that transformed the military paradigm. During the interwar period and following the two world wars, national secu-

rity was strictly defined as protection against external threats, especially military ones. International alliances, such as the League of Nations and, later, the United Nations (UN), were created to prevent international conflicts and to ensure a collective security system. During the Cold War period, security was largely defined by the confrontation between the geopolitical blocs of NATO (with the United States at its center) and the Warsaw Pact (under the leadership of the Soviet Union). In this context, security was highly militarized, focusing on nuclear deterrence and maintaining the balance of power between the two superpowers. The Cold War was characterized by ideological and strategic competitions, and the concept of "national security" was closely linked to a state's ability to withstand external pressure.

After the end of the Cold War and the collapse of the Soviet Union in 1991, security began to be reconsidered in the context of globalization and new threats. After 1991, "national security" was reinterpreted from a strictly military logic into a much more complex context, including non-military risks such as terrorism, internal conflicts, transnational crime, and economic instability. Many states began to redefine security in broader terms, which also include the economic, social, and environmental dimensions. After the terrorist attacks of September 11, 2001, and the launch of the "War on Terror," national security became closely linked to combating international terrorism. In this context, strengthening security included both military measures (the wars in Afghanistan and Iraq) and internal security measures (particularly in the field of cybersecurity and the protection of critical infrastructure).

In recent decades, the concept of "security strengthening" has expanded beyond the military and national dimension, including new global challenges and approaches that emphasize human security and the multilateral integration of security.

Threats such as climate change, global pandemics (e.g. COVID-19), mass migration, and international economic crises have led to a "broader concept of security." In this context, security is not only about defending a state against invasions but also about ensuring economic well-being, environmental protection, and reducing social inequalities. With the development of the internet and digital technologies, cyber threats have become an essential component of national and international security. States and international organizations have begun to pay increased attention to protecting critical infrastructures from cyberattacks. In this context, the notion of "human security" has become increasingly important. It refers to the protection of individuals from multiple threats, such as violence, poverty, social inequalities, and armed conflicts, promoting a holistic approach to security that focuses on people's fundamental rights and needs.

Methods and materials applied. The methodology of the study conducted on national and international security is based on a multidimensional approach, taking into account the historical, economic, political, and social evolution of the security concept. It includes a comparative analysis of the different stages of security development from territorial defense in ancient and medieval communities to contemporary global security, marked by non-military threats such as terrorism, transnational crimes, climate change and cybersecurity.

The study employs a historical method to understand how security perceptions and policies have changed over time, emphasizing the transition from a restrictive view of security to a broader one that includes economic, social, and ecological dimensions. Additionally, a theoretical approach is used to explore key concepts such as human security, cybersecurity and international cooperation.

Furthermore, the methodology of this study includes an analysis of the interaction between military and civilian institutions, aiming to highlight the importance of a strong security culture and a joint effort involving both the state and citizens. This holistic approach seeks to integrate theoretical insights and practical experiences from various security domains, as well as contributions from experts in both the academic and private sectors.

Discussions and results obtained. **Main ideas of the research**. In the classical view of security, states had a particular interest in ensuring a safe environment for individuals in the face of traditional threats. However, at the current stage, the role of the state has increased in this regard, and as a result, the state, governments, and leaders have the mission to find solutions that lead to prosperity, democratic development, and the protection of human rights [10].

Researching the modernization process of the national security system of the Republic of Moldova in the context of European integration is a particularly relevant and complex topic. The modernization process is multidimensional and generates debates and perceptions about the role of state security bodies within the national security system. Situations such as the outbreak of war at the borders and obtaining candidate status for the European Union give a new strategic and practical meaning to the process of modernizing the national security system of the Republic of Moldova [17]. Thus, to meet the requirements of a candidate state for the European Union and to respond to external conditionalities, the national security system of the Republic of Moldova undergoes continuous transformation through reform and innovation. This is characterized by vertical modernization, which includes the subordination of state security bodies and the extension of their functional competences, and horizontal modernization, which is expressed through internal institutional restructuring and greater openness towards civil society.

Modernizing the national security system by integrating it into the European Security System, represents a strategic imperative of national importance, requiring institutional and legislative adjustments to meet the European Union's requirements. In this context, the process of strengthening the institutional capacities of the national security system is linked to ensuring the national interests of the Republic of Moldova, being influenced by a series of internal and external factors of geopolitical, political, and economic nature, as well as by transformations within the international security system, characterized by globalization, hybrid warfare, migration, and instability in international relations [17].

The concept of "security" has been and remains an intensely debated concept, with numerous nuances. At the middle of these debates has been, paradoxically, the very definition of security. Being an extremely politicized concept, often used according to the interests and purposes of the actors within the system, the term often seems to serve as a pretext for one action or another. Security is primarily defined as ensuring the continued existence of the state, which is also its fundamental purpose. The expansion of the security agenda has resulted in a new analytical framework, allowing for the inclusion of a wider range of sectors beyond the military and political ones. This has brought with it a series of political consequences, thereby highlighting the complexity and originality of this approach [4].

It is certain that the approach to the national security system in the specialized literature differs between Western researchers and those from some ex-Soviet States. This fact is primarily argued by the conceptual differences between the Western political science school and the post-Soviet one. The merit of the first group of authors' lies in conducting

some empirical studies dedicated to the democratization processes in developing states and identifying certain laws, classifications, and specific features for different political systems. The political science school in post-Soviet States, established much later, had the opportunity to systematize the studies conducted in the West, laying the conceptual, theoretical-methodological, and structural foundations of the security policy promoted domestically [17]. However, in this school, the difference between the national security system and the state security system is significantly diminished, with an emphasis on the role of state security bodies. Interest in the security issue within the scientific community has been the subject of extensive debates over several centuries. The origins of security concepts can be traced back to the works of ancient philosophers and thinkers, who considered security as a condition characterized by the absence of danger from the external environment. Later, in the 12th century, the understanding of the essence of security expanded to include the evaluation of spiritual security through unity with God. During the Renaissance, social security was defined as equality and cooperation, with the primary threat being considered the discrepancy between culture and politics. Modern-period philosophers such as T. Hobbes, B. Spinoza, J. Locke, and F. Bacon paid particular attention to the role of governance in ensuring national security, viewing public interest and state security as interconnected. During the same period, the concept of a safety culture was introduced. The Enlightenment era, through representatives such as J. Rousseau, Voltaire, D. Diderot, and P. Holbach, recognized the importance of personal security as an integral part of the security of the entire society, including public safety and the foundations of international security. German philosophers from the 18th and 19th centuries, like I. Kant, I. Fichte, G. Hegel, and others, made a significant contribution to the development of ideas about national security and the role of the state. In the 19th and early 20th centuries, the predominant influence on the perception of security came from various political doctrines (Marxism, socialism, etc.), as well as sociological theories and concepts (the theory of solidarity, the theory of social progress, the socio-institutional concept, etc.). This led to the emphasis on examining public safety conditions based on the principles of social compromise, collective action, and social equality. At the end of the 20th and the beginning of the 21st centuries, the development of ideas about security in the social and human sciences generated several fundamental approaches to this concept [15].

The study of various approaches to national security, its forms of expression through other scientific categories of socio-political and philosophical disciplines, shows that two research directions have gained wide recognition. According to the first direction (S. Brown, B. Brody, W. Lippman, N. Caplan, H. Morgenthau, S. Hoffman), national security and its derived categories are studied through the lens of national interests. Representatives of the second research direction (A. Wolfers, C. Norr, F. Treger, D. Cauffman, and others) associate national security with the system of fundamental societal values [12]. The historiographical analysis of the security concept highlights four major directions in the categorical debate on this subject. The first direction focuses on definition issues, while the second addresses conceptual debates surrounding security. The third direction concentrates on the application issues of security in the European context, while the fourth examines the functioning of the concept in non-European regions and at a global level. The scientific conceptualization of the modernization process of the national security system of the Republic of Moldova in the context of European integration aligns with the third and fourth directions of conceptual security development. In this context, we emphasize the role of adapting the conceptual-practical approach of the term “national

security" as included in national legislation to that of European security, with the EU's role being the one that assigns a new quality to this subject [13].

At the same time, what remains contested is the type of security logic implemented at the EU level and which policy areas are incorporated into European security [20]. However, there is still a dispute regarding the type of security logic implemented at the EU level and the policy areas embedded in the concept of European security, which remains a subject of ongoing debate within the security sphere and reflects the diversity of national and regional perspectives and priorities within and beyond the European Union. At the same time, research on European security [1; 2], indicates that there are four key areas of the security mission that have a valuable European contribution (protecting against terrorism and crime, ensuring the security of infrastructures and public services, protecting borders, and restoring security in crisis situations), as well as three cross-cutting areas (integration and interoperability of security systems, security and society, coordination and organization of security research) [20]. We believe that these aspects should also be reflected in national studies related to national security.

Conceptually, the issue of national security is the subject of ongoing reconsiderations primarily determined by the interaction of six factors:

– the dynamics of the international system and the evolution of methods of aggression against nations;

– the specific internal situation of each nation;

– the geopolitical specificity of each nation;

– the possibility of shaping security policy either in aggressive or defensive ways;

– the differing scope of national security for great powers versus small states (for the former, national security acquires a regional and even global dimension, while for the latter, security is achieved against the backdrop of the evolving balance among great powers and depending on the dynamics of their own relations with these powers and their neighbors);

– differences in theoretical perspective in analyzing, designing, and implementing national security strategies [19].

Thus, the constant changes occurring in the dynamics of any of the aforementioned factors necessitate the continuous redefinition and updating of security and national security concepts.

The author Barry Buzan, in his renowned work "*People, States and Fear*", significantly broadens the scope of analysis and application of the concept of "security" and "national security," arguing that "in the case of security, the discussion consists of reducing threats. In the context of the international system, security denotes the ability of states and societies to preserve their autonomy, identity and functional integrity" [3]. Another important element introduced by Barry Buzan, a representative of the "Copenhagen School," in the analysis of security is the distinction between strong states (with an advanced degree of political and social cohesion) and weak states (with low internal legitimacy and fragile control over power institutions). These nuances are vital to understanding the nature of security and national security and the fact that states react to dangers and threats according to their vulnerabilities. In this context, we will also mention the definition by Dominique David, who proposes approaching security "in the broader sense of the term [...], as a state of a subject who perceives themselves as unthreatened by any danger or thinks about the means of responding to danger if it may become real" [9]. Thus, without dispute, national security is studied in terms of threats, risks, and vulnerabilities, and it

should be noted that none of these manifest independently. At the same time, the concepts of security and national security, complex and controversial, have been defined either according to their military component, with the main actor being the armed forces (in a Hobbesian style), or according to the human component, with laws and economic assistance as the main means of realization (in line with Kantian views on the world). In this context, we can also talk about the social and environmental dimensions of security, influenced by various non-military challenges to security (e.g., population growth, massive urbanization, food reserves, climate change, soil erosion, and water pollution). Barry Buzan offers a complex vision of the dimensions of security, including military, political, economic, social, environmental, etc. Military security refers to the reciprocal interaction of offensive and defensive armed capabilities of states with their perceptions regarding the intentions of others. As often noted in the literature, military security continues to be at the center of overall security issues. "Historically and logically, preventing the military activities of other nations from crossing physical borders is the narrowest function of military power" [11]. Political security exclusively refers to the stability of a social order, highlighting key threats that repeatedly target state sovereignty [17].

It also considers the organizational stability of states, governance systems, the ideologies that grant them legitimacy, and strategies for internal and external development. When discussing societal security, we refer to maintaining the collective national identity, traditional patterns of language, culture, religion, and customs of a people within acceptable conditions that allow the evolution process.

As events unfold, some of the biggest challenges for European security will stem from the societal component, given the situations in Bosnia-Herzegovina, Moldova, Macedonia, Kosovo, Belarus, Montenegro. Societal security is extremely important but cannot be achieved without the foundation of individual security. In international documents, the notion of social security is often encountered, first mentioned (though concerning a rather narrow sphere of human activity, without a clear definition) in the ILO materials from 1952 [17]. Local authors provide the following definition: "Social security is the state of protection from various dangers that threaten the vital interests of the person and the relationships between social groups regarding their situation and place in society" [18]. The basic criteria of social security are considered to be the conditions for vital human activity and personal spiritual development; the family's position as a social instrument; the degree of social stability of society; the extent of societal and population degradation.

Today, social security guarantees have taken the form of social insurance against the basic risks of industrial life: workplace accidents, occupational diseases, unemployment, old age. When referring to the economic dimension, it concerns the economic foundation of military power, as well as the purely economic aspect of security at all five levels. According to economist V. Senceagov: "The essence of economic security can be defined as a state of the economy and power institutions through which the guaranteed protection of national interests, socially-oriented development of the state, and sufficient military potential are ensured, even in less favorable external and internal conditions" [21]. Thus, economic security refers to the state's ability to access strategic resources and necessary spaces to maintain its power and existence not only in peacetime but also in wartime. Achieving economic security requires the establishment of a system for protecting economic resources, inventions, and strategic areas of interest. In this context, the possession, availability, and effective use of natural resources, especially energy resources, are a source of tensions, crises, or even conflicts. Moreover, achieving national security and defense decisively depends

on the economic resources that a country relies on at a given time, especially under globalization conditions, where economic power plays a crucial role in determining a nation's position. Therefore, we can say that in the current conditions, national security can only be achieved on a well-defined economic foundation, with sufficient material, human, financial, scientific premises, etc. "To discuss or project national security without considering its economic component is like building a sandcastle near the sea waves" [14]. Napoleon did not venture to fight the English – he sought to crush them with an economic blockade. In general, the economic component in many wars was significant, and separating it from the political-military aspect is quite challenging.

The reform of the national security system has become a national priority for many states, stemming from the need to adapt to the dynamic changes in internal political, economic, and social transformations, as well as to regional geopolitical realignments resulting from the end of the Cold War. In this context, the Republic of Moldova began by creating the national security system, which materialized through the formation of the regulatory framework and empowered structures. In 1994, the Constitution of the Republic of Moldova and other relevant political and legal acts were adopted, followed in 1995 by the first National Security Concept of the Republic of Moldova, which was succeeded by the National Security Concept of the Republic of Moldova on May 22, 2008, and the adoption of the National Security Strategy of the Republic of Moldova on July 15, 2011. Moreover, the initiation of the process to develop a new draft of the National Security Strategy in the spring of 2015 demonstrates that the reform of the national security sector is actively ongoing. In this regard, A. Barbăneagră, advisor to the President of the Republic of Moldova on defense and national security, pointed out meaningfully that "The strategy approved by Parliament in 2011 has largely become obsolete because social, economic, political and military conditions have changed" [8].

So, the fundamental official documents that outline the field of action of the national security of the Republic of Moldova are: the Constitution of the Republic of Moldova (July 29, 1994); the Concept of Foreign Policy of the Republic of Moldova (February 8, 1995); the Military Doctrine (June 6, 1995); the State Security Law (October 31, 1995); the Concept of Military Reform (July 26, 2002); the Concept of National Security (May 22, 2008); and the National Security Strategy (July 15, 2011). From the outset, it is important to mention that in the Concept of National Security of the Republic of Moldova, the national security system is defined as a set of concepts, strategies, policies, means, regulations, and administrative structures of the state, as well as a set of social institutions that have the role of realizing, protecting, and promoting the country's national interests [14]. The first documents developed and adopted in the years 1994-1995, including the first National Security Concept of 1995, placed particular emphasis on the creation and recognition of the state of the Republic of Moldova. At that time, political, military and economic security needed to be explained, understood and established. In this regard, the Constitution of the Republic of Moldova [16] represents the fundamental document, as it defines the principles of the state's existence, including sovereignty, independence, unity, and indivisibility. The fundamental law determines the values that must be established and secured: the rule of law, democracy, human dignity, human rights and freedoms, the free development of human personality, justice, and political pluralism. At the same time, the protection of citizens and the guarantee of fundamental rights represent a fundamental priority of the state, with citizens benefiting from state protection both domestically and abroad: the right to defense, freedom of movement, private and family life, inviolability of

domicile, confidentiality of correspondence, freedom of conscience, freedom of opinion and expression, freedom of creation, etc. [6].

The Foreign Policy Concept, another relevant document for the implementation of national security policy, identifies the place of the Republic of Moldova in the international community, as well as the priorities, principles and directions of its foreign policy. Thus, strengthening the country's independence and sovereignty, ensuring territorial integrity, asserting the country as a factor of stability at the regional level, contributing to the promotion of the socio-economic reforms necessary for the transition to a market economy and raising the well-being of the population, and building the rule of law constitute important priorities of foreign policy and represent the country's external priorities [5]. In this regard, the Republic of Moldova has pursued its full integration into the international system by joining various regional and international structures. However, we consider that this process has not been supported by a well-defined strategic vision. In the context of a traditional antagonism between Russia and the West, the Republic of Moldova has not clearly explained the primary direction of its foreign policy, which subsequently had a negative impact on promoting national interests and ensuring security. The country's oscillation between East and West, between two development models (one Soviet and the other European, of a liberal-democratic type) has significantly undermined the Republic of Moldova's ability to definitively resolve the Transnistrian conflict, has considerably delayed the prospects of association with European integration processes, has created constant social and political tensions, and has systematically delayed the implementation of sustainable and effective democratic reforms. Even opting for a status of permanent neutrality can be considered a significant vulnerability resulting from a diachronic geostrategic hesitation.

Results obtained. The results of the study conducted on the modernization of the national security system of the Republic of Moldova in the context of European integration highlight several essential aspects related to the evolution and transformations of this system, influenced by internal and external factors. The study on the modernization of the national security system of the Republic of Moldova in the context of European integration emphasizes the importance of adapting this system to new internal and external realities. The research concluded that the modernization process is continuous and necessary, considering that the country faces complex geopolitical and economic challenges. Modernization is not limited only to the restructuring of institutions but also includes fundamental changes in the approach to the concept of security, which must reflect both national interests and the requirements of the European Union. In this context, national security is being redefined, becoming an integral part of a broader European concept that emphasizes the interdependence between national and European security.

The study also highlights the external and internal influences that shape the national security of the Republic of Moldova, particularly the connection with internal conflicts, such as the Transnistrian issue, and external pressures from major powers. Despite these challenges, the process of reforming the national security system continues, and Moldovan authorities are focusing on strengthening institutional capacities and improving cooperation between security agencies. The modernization of this system also involves integrating new dimensions of security, such as economic and social security, which are becoming essential for the country's stability. Thus, the process of European integration requires not only adaptation to international standards, but also the development of a coherent and sustainable national strategy to address the multiple challenges faced by the Republic of Moldova.

Conclusions. Analyzing the process of modernizing the national security system of the Republic of Moldova, it is evident that this represents a strategic necessity, considering both internal challenges and external influences. Throughout the study, it has been emphasized that Moldova's European integration cannot be achieved without a profound reform of this system, adapting it to international standards and the specific requirements of the European Union. This modernization does not only entail changes in institutional structures, but also in the mindset and approaches applied in the field of security.

National security must be viewed in an integrated manner, within the current regional and global context, where rigid boundaries between internal and external security no longer exist. In this regard, the Republic of Moldova must move beyond the classical vision focused on military security and adopt a much broader approach, including economic, social and even cultural dimensions. Thus, strengthening governmental institutions, especially those responsible for national defense, as well as developing a well-coordinated security infrastructure among all state agencies, becomes fundamental for long-term stability and prosperity.

Another important aspect lies in the geopolitical factor. Moldova, facing a complex security situation marked by the Transnistrian conflict and external influences from regional powers, must adopt a flexible foreign policy that allows for navigating the interests of different states and international organizations. Regional cooperation and integration into a European collective security system not only offer an opportunity to protect sovereignty and territorial integrity, but also provide a way to strengthen economic and political ties with EU member states and other global actors.

Moreover, to succeed in European integration and strengthen national security, the Republic of Moldova must understand that it is not enough to merely implement legislative reforms or improve defense equipment and technologies. It is essential that these changes are supported by a coherent national vision and a long-term strategy that involves active participation from the entire society, not just governmental institutions. This process involves not only modernizing defense and security structures, but also a firm commitment to fundamental citizens' rights, transparency, and adherence to democratic principles, in line with European standards.

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METHODOLOGICAL PARTICULARITIES IN INVESTIGATING THE INVOLVEMENT OF PUBLIC OFFICIALS IN THE ILLEGAL PRACTICE OF ENTREPRENEURIAL ACTIVITY

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Summary

This article analyzes the methodological particularities of investigating the involvement of public officials in the illegal practice of entrepreneurial activity, with a focus on the regulatory framework and investigative practices in the Republic of Moldova. It highlights concealed forms of involvement, specific criminal typologies, relevant evidentiary sources, dissimulative behaviors, and institutional difficulties that impact the effectiveness of criminal investigations. Based on doctrinal and practical analysis, the paper formulates concrete proposals aimed at strengthening investigative tactics and improving the national legal framework.

Keywords: public official, entrepreneurial activity, incompatibility, abuse of office, proxy, investigation methods, conflict of interest, corruption.

Introduction. The investigation of offenses committed by persons holding positions of responsibility in the context of the illegal practice of entrepreneurial activity requires a complex methodological approach, situated at the intersection of criminal law, administrative offense law, and public integrity norms. Since such acts are typically committed in a concealed manner and benefit from an appearance of legality, traditional investigative methods must be adapted to reveal the actual relationships between the public official and the economic activity conducted under the guise of other entities.

This phenomenon is often linked to other forms of unlawful conduct, such as influence peddling, bribery, conflicts of interest, or abuse of office. From a criminalistics perspective, there is a noticeable trend of concealing direct involvement through third parties – relatives, proxies, former colleagues – who are formally listed as founders or administrators of the respective business entities. In such cases, the investigation is oriented towards analyzing relationships of control and benefit, rather than focusing solely on ownership structures.

Discussions and results obtained. In the Republic of Moldova, the incompatibility regime for persons holding positions of responsibility is regulated by several normative acts, especially Law No.158/2008 on the public function and the status of the public serv-

ant [1], and the Integrity Law No. 82/2017 [2]. These provisions aim to prevent conflicts of interest and ensure integrity in the public service [3, 49-53].

According to Article 25 of Law No.158/2008, public servants are prohibited from:

– Engaging in entrepreneurial activity, except for holding the status of founder of a commercial company, provided that the company's field of activity is not directly or indirectly related to the duties exercised as a public servant, according to their job description;

– Favoring, by virtue of their position, the entrepreneurial activities of natural or legal persons;

– Engaging in other remunerated activities under an individual labor contract or any other civil contract within commercial companies, cooperatives, state or municipal enterprises, as well as nonprofit organizations from the public or private sector, whose activity is subject to the control, subordination, or competence of the authority where they are employed, etc.

Law No.288/2016 on the status of public servants with special status within the Ministry of Internal Affairs [4] stipulates that "a public servant with special status is not allowed to engage in entrepreneurial activities, except for holding the status of founder of a commercial company, nor to facilitate, by virtue of their position, the entrepreneurial activities of natural or legal persons".

According to paragraph 2 of Article 241 of the Criminal Code of the Republic of Moldova [5], the illegal practice of entrepreneurial activity is punishable when committed with the use of one's official position, with the use of such a position being considered an aggravating circumstance. Similar offenses are also punishable in other countries [6, p.45-48].

The incompatibility regime in the Republic of Moldova is designed to ensure the integrity and impartiality of public officials by preventing situations in which they may have personal interests that could influence their professional decisions or activities.

The illegal practice of entrepreneurial activity by public officials is typically not an isolated offense. It is frequently combined with, or preceded by, acts such as influence peddling, where the official exploits their position to obtain economic benefits for a company they control; bribery, when the official pressures business partners to provide advantages in the context of public contracts; abuse of office, when documents contrary to the law are issued for personal benefit or for the benefit of an affiliated commercial entity; and undeclared conflicts of interest, which give rise to related criminal or administrative offenses, as well as institutional vulnerabilities.

A common mechanism used to avoid legal sanctions is the use of "proxies" – individuals who are officially listed as founders, shareholders, or administrators of commercial entities but who do not actually exercise control. Among the most frequently used proxies are spouses, children, or other close relatives, trusted colleagues or former employees of public institutions, as well as unemployed individuals or persons with low levels of education, who accept the formal role of administrator in exchange for symbolic benefits, and so on [7, p.153-158].

This strategy of concealing real influence relationships is recognized as a typical feature of white-collar crime and serves to reduce the risk of detection through standard control mechanisms (inspections by the National Integrity Authority [8, p.16-17], internal audits, investigations by the National Anticorruption Center).

An analysis of the investigative practices of the National Anticorruption Center and

the Anticorruption Prosecutor's Office reveals several criminalistics patterns:

1. The "contract with one's own firm" typology – where the official, via intermediaries, signs contracts between their public institution and their own company, sometimes bypassing procurement procedures. In this scheme, the public servant awards public contracts to a commercial entity they effectively control, yet masked by proxies (spouse, relatives, acquaintances). The official uses either simplified procedures or informal influence over evaluation committees to steer procurements. Characteristics include: the winning firm is not officially linked to the official, but is de facto managed by them; quoted prices are sometimes unjustifiably high; the company's economic activity is often limited exclusively to contracts with the very institution where the official works. Example (hypothetical, inspired by case practice): a Section Chief in a district social assistance department sign, via simplified procurement, a contract for food supplies with a firm formally run by his brother-in-law. The company was founded only two months before the bid and has only one client – the public institution. The procurement occurs without consulting other offers, and deliveries are of poor quality. The National Anticorruption Center's investigation reveals that the official prepared the procurement decisions, and the firm's administrator had no real control over operations.

2. The "consultant-official" typology – where the official provides consulting or expert services to private firms in exchange for disguised commissions, even though this contravenes the incompatibility regime. This involves the public official offering "consulting services" or "strategic support" to private companies, often in the same field in which they officially work. Even without signing formal agreements, the official shares confidential information or uses their influence to help firms obtain contracts, licenses, or authorizations. Typical indicators include: masked income through fictitious civil contracts (e.g., drafting services, market analysis), the official effectively mediates access to favorable decisions, and these activities often go undeclared in asset and interest declarations. Example: An environmental protection agency specialist is "unofficially" employed by a construction firm to facilitate environmental authorization. In return for a monthly sum disguised as payment for "ecological consultations", the official provides guidance on avoiding negative reviews and influences the commission's final decision. CNA investigation proves that the consultancy reports were copied from the internet, and the income was not declared.

3. The "decision-maker partner" typology – where the official facilitates contracts with indirectly controlled partner firms, granting them wins from public funds or preferential access to resources. Here, the official is not the founder or consultant, but a decision-maker (e.g., mayor, institution director, division head) who favors partner firms – either through contracts or by providing administrative advantages. The official's benefits may be indirect: commissions, hiring of relatives, firm-paid vacations, etc. Characteristic elements: involvement is indirect, but visible through acts and benefits obtained; the firms have economic or social ties to the official (donors, sponsors, etc.) and are repeatedly favored by that institution. Example: a mayor repeatedly awards road maintenance contracts to a firm whose administrators are party comrades. Even though tenders are held annually, qualification criteria are drafted so that only that firm can meet them. The firm, via an intermediary, pays for the mayor's vacations and sponsors a sports team run by his son. Based on wiretaps and witness statements, CNA officers confirm the indirect link and conclude the existence of a criminal agreement.

Among the enabling factors for this type of crime are privileged access to confiden-

tial information (e.g., public procurement plans), a decision-making position that allows influencing contract award procedures or obtaining permits, insufficient internal control and audit in public institutions, and the inefficient operation of asset and interest declaration regimes, which makes it difficult to detect unjustified accumulation of assets.

To prove the effective involvement of a public official in an activity prohibited by law, law enforcement agencies must adopt a multidisciplinary approach based on integrated analysis of information from administrative, fiscal, digital, and human sources. In the context of role concealment through intermediaries or contractual mechanisms, identifying economic, decision-making, and behavioral links becomes essential. The main categories of sources and methods used are:

1. Public registers and institutional information. State institutions provide access to official data concerning ownership and the status of founder or administrator, which can reveal hidden economic relationships. The State Register of Legal Entities reveals the founders and administrators of companies. Even if the public official does not appear directly, the analysis of repeated changes in shareholders or presence of relatives or close individuals may indicate masked involvement. The Public Services Agency – Cadaster Directorate allows verification of real estate registered in the names of the official or their relatives – searching for recent transfers, donations, or inexplicable purchases. The State Transport Register is useful for detecting valuable vehicles used by the official but registered under companies or other persons. Example of use: if the official uses a "premium" car daily, registered in the name of a company administered by a second-degree relative, there are indications that the company is informally controlled by that official.

2. Fiscal and financial information. Cooperation with the State Fiscal Service is essential to obtain accounting statements of firms suspected to be controlled by the official, income declarations of related persons, commercial transactions that may raise suspicions between firms and public institutions, and truncated or unjustified tax reports relative to actual activity. These can be corroborated with commercial bank data, under judicial authorization, to verify monetary flows and possible cash withdrawals, payments to relatives, or "masked payments". Example of use: company X, administered by the official's son-in-law, declared zero profit for three years despite receiving significant public contracts. Bank analysis shows funds were withdrawn in cash by the son-in-law and immediately used for real estate purchases where the official actually lives.

3. Communications interception and technical surveillance. Authorized telephone and electronic communications interceptions [9] can reveal informal orders given by the official to administrators or employees, negotiations personally conducted by the official in the name of the firm, instructions to falsify documents or hide information from control bodies. Additionally, video and environmental surveillance (in offices, company premises, public locations) provides indications of the official's active presence in the decision-making process of an economic entity.

4. Witness statements and human sources. An essential role is played by the employees of the involved companies, who can confirm that the public official is in fact the one making business decisions; collaborators from the public institution, who may report favoritism or pressure; and personal acquaintances, who can provide details about lifestyle, undeclared income, or operational methods. Example of use: an accountant testified that although documents were signed by the administrator, all major economic decisions were made by official X, who also attended meetings with suppliers.

5. Document analysis. The criminal investigation must include commercial con-

tracts, addenda, invoices, payment orders, email correspondence between the official and business collaborators, meeting minutes, or internal documents showing the official's involvement in business activities [10, p.49-60], as well as promotional materials, catalogs, or websites where the official appears unofficially. These documents can be obtained through searches or by seizing documents from third parties (e.g., IT companies, banks, suppliers). Example of use: on the official website of a construction service company, the "About Us" section displays a photo of official X and describes him as "the founder of our vision". Officially, the company is owned by another person.

6. Examination of the official's lifestyle. One of the indirect but highly effective methods for identifying hidden involvement in economic activities is the analysis of the official's lifestyle in relation to their declared income. Key indicators include: acquisition of high-value assets (cars, houses, luxury items), frequent foreign travel, exotic vacations, participation in expensive events, high living expenses (private schools, costly medical treatments, leases, elite clubs). These elements are compared to official income, and any discrepancies may indicate involvement in illegal or undeclared economic activity. Example of use: a mid-level official declares a modest annual salary but lives in a recently renovated villa, drives a premium vehicle, and sends their children to an international private school. Documenting these expenditures through legal methods (open sources, tax findings, witness testimony) helps build the forensic hypothesis of either illicit enrichment or involvement in illegal entrepreneurial activity [11, p.10-15].

7. Verification of asset and interest declarations. The annual asset and interest declarations submitted by public officials and verified by the National Integrity Authority (ANI) are essential tools for uncovering evidence: intentional omissions of assets held through proxies, failure to declare income from consulting, rent, dividends, or undeclared conflicts of interest involving companies with contracts with the public institution.

These declarations must be compared against public registry data, bank statements, company documents, and the declarations of other family members. Example: ANI finds that a public official failed to declare a 1.5 ha agricultural plot, purchased via a company whose sole associate is a brother living abroad. It is later proven that the land is cultivated for the benefit of the official.

8. Analysis of relationships and social networks. In the digital age, social media profiles and the relational network of the official can provide valuable, even if indirect, information: photos taken at locations affiliated with investigated firms, frequent interactions with individuals involved in economic activities, posts reflecting high financial status, or "friendly" connections with individuals appearing on the boards of commercial entities. While such information does not constitute evidence in itself, it can guide the investigation or confirm already formulated hypotheses. Example: Public posts show that the official regularly participates in promotional events of a construction firm, which repeatedly wins tenders organized by the institution where the official works.

9. Interinstitutional cooperation. Combating these types of offenses and infractions requires strategic cooperation among several control and investigative bodies: CNA (National Anticorruption Center) – for investigating the offense and conducting criminal procedure acts, National Integrity Authority (ANI) – for identifying incompatibilities and conflicts of interest, State Tax Service (SFS) – for analyzing financial flows and income declarations, Public Services Agency (ASP) and State Registration Chamber (CIS) – for information on properties and company structures, Office for the Prevention and Combating of Money Laundering – for identifying suspicious transactions.

The lack of a shared data platform and institutional interoperability remains a major obstacle to the rapid documentation of facts. Example of best practice: in a 2023 corruption case, the CNA launched a criminal investigation in parallel with ANI, and the SFS provided accounting statements proving that a company associated with a public official received over 1.2 million MLD from a public contract. The consolidation of this data led to the official being indicted.

Investigating the involvement of public officials in the illegal practice of entrepreneurial activity in the Republic of Moldova, as well as in other activities leading to illicit enrichment, faces numerous challenges stemming from both legal loopholes and institutional or operational deficiencies of law enforcement. These shortcomings reduce the effectiveness of criminal prosecution and, in some cases, facilitate impunity.

Although Article 241(2) of the Criminal Code of the Republic of Moldova criminalizes the illegal practice of entrepreneurial activity involving abuse of office, several practical issues arise:

- The notion of "abuse of office" is not clearly defined, although it is listed as an aggravating factor in 39 distinct offenses;

- The absence of a distinct criminalization of involvement through proxies allows public officials to avoid criminal liability by claiming they are not founders, administrators, or signatories of official documents;

- There is no sufficiently severe sanctioning regime for individuals who agree to act as proxies, even though they contribute to the concealment of criminal acts;

- The lack of interoperability between the IT systems of institutions (ASP, CIS, ANI, CNA, SFS, Ministry of Internal Affairs) prevents real-time data analysis.

Procedural obstacles in criminal investigations include: difficulties in obtaining authorization for wiretapping or bank data without direct preliminary evidence, the necessity of corroborating indirect evidence (surveillance, witnesses, partial documents) in the absence of official recognition or involvement, increasing the risk of case dismissal, delayed responses from partner institutions, especially those with critical data on money flows or corporate structures.

Investigating the involvement of public officials in the illegal practice of entrepreneurship and other activities that lead to illicit enrichment requires a complex, integrated approach adapted to the realities of the Republic of Moldova. This type of administrative-economic crime is marked by a high degree of concealment, the use of proxies, exploitation of legislative loopholes, and increasingly sophisticated evasion methods. Without systemic and multidisciplinary intervention, such acts often go unpunished, severely undermining public trust in government and justice.

The hidden participation of officials in business activities constitutes a form of administrative corruption with systemic risk. The investigation requires the corroboration of indirect evidence and the use of special investigative techniques, yet current legislation does not always provide effective tools to sanction proxy involvement or the abusive use of influence.

Criminalistics recommendations: develop a specialized criminalistics guide for investigating public officials' incompatibilities, with emphasis on behavioral, relational, and financial analysis, strengthen the investigative capacities of the CNA and prosecutors through continuous training in economic-financial analysis, conflict of interest cases, and undercover techniques, develop methods to identify informal control by correlating data from administrative, fiscal, and social sources.

Legislative recommendations: introduce a distinct criminal offense for involvement

in economic activities through proxies by public officials, regulate criminal or administrative liability for individuals who act as proxies to evade incompatibility rules, extend the sanctioning regime for officials who intentionally omit to declare relevant personal and economic interests.

In conclusion, combating the illegal involvement of public officials in business activities requires more than just the enforcement of criminal norms. It demands an integrated vision focused on prevention, prompt reaction, and proportional sanctioning – built on a modern institutional infrastructure, clear legislation, and a public service culture of integrity.

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THE IMPOSITION OF CRIMINAL PUNISHMENT IN ACCORDANCE WITH THE EFFECTS OF MITIGATING AND AGGRAVATING CIRCUMSTANCES

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Summary

Judicial individualization involves establishing and applying a punishment that reflects the harm inflicted on social values by the person who committed the offense. This process entails the use of a complex set of mitigating and aggravating circumstances, alongside the general criteria for individualization, which serve as the starting point of this work. The paper constitutes an analytical material on the current legal provisions regarding the institution of punishment individualization in general and the institution of applying punishment in accordance with the effects of mitigating and aggravating circumstances in particular. The legal framework within which judicial individualization must occur is analyzed. The means and criteria for individualizing criminal punishment, as determined by law, are outlined. A distinction is made between general and special criteria for punishment individualization. The nature, role, and importance of mitigating and aggravating circumstances, which form part of the general criteria for punishment individualization, are assessed.

Essential doctrinal opinions regarding the classification, role, and significance of mitigating and aggravating circumstances are presented. The effects of mitigating and aggravating circumstances on determining the punishment of the accused are evaluated in three situations regulated by law: a) the court retains only mitigating circumstances and their effects; b) only aggravating circumstances exist in the commission of the act and their effects; c) the court retains a concurrence of aggravating and mitigating circumstances and their effects. Also, proposals for "lege ferenda" are made.

Keywords: criminal punishment, punishment individualization, judicial individualization, general and special individualization criteria, mandatory nature of individualization criteria, mitigating and aggravating circumstances, nature and role of mitigating, effects of mitigating and aggravating circumstances.

Introduction. Judicial individualization of punishment is the exclusive prerogative of the court when applying the legally prescribed punishment to the accused for the committed offense. This is achieved by evaluating the gravity of the specific crime and the dangerousness of the offender based on certain criteria established by law. In the same vein, judicial individualization of punishment represents one of the most important and sensitive legal operations, the accuracy of which directly determines the success of the convict's rehabilitation and reintegration process. In other words, judicial individualization of punishment involves determining, for a specific person found guilty of committing a crime, the category, duration, or quantum of punishment necessary and sufficient to achieve the purposes of criminal punishment.

According to Article 21 of the Constitution of the Republic of Moldova, any person accused of a crime is presumed innocent until proven guilty in a public judicial process where all necessary guarantees for their defense are ensured. Additionally, under Article 114 of the Constitution, justice is administered in the name of the law solely by judicial authorities.

These constitutional provisions establish that only the court can determine a per-

son's guilt for committing a crime and only the court can impose a punishment for the committed offense. When issuing a conviction, the court determines which category and severity of punishment are sufficient to achieve the purposes of punishment and whether the punishment complies with all legal requirements and the circumstances of the case.

In this context, it is fundamental that a person found guilty of committing a crime, receives a fair punishment within the limits set by the corresponding article of the Special Part of the Criminal Code (CC). The court's application of a fair punishment is based on a comprehensive, objective evaluation of all case circumstances and a correct conclusion regarding the legal classification of the offense, citing the relevant article, paragraph, and section of the Criminal Code of the Republic of Moldova under which the person is convicted. It is also noted that courts are obligated to adhere to the principles of criminal liability: legality, equality before the law, humanism, culpability, and individualization of criminal liability and punishment (Articles 3-7 CC).

As a stage in the application of criminal law, judicial individualization is carried out based on the law, within the conditions and limits established by law. Criminal law sets the coordinates within which judges determine and apply specific punishments. These coordinates form the legal framework for judicial individualization, which includes the general framework of punishments applicable to natural persons (Article 62 CC) and legal entities (Article 63 CC), as well as the general limits for each type of punishment for natural and legal persons, the types of punishments prescribed by law for each offense, their specific limits, and various grounds for mitigating or aggravating punishment.

The requirements imposed by the principle of legality are not limited to the obligation that judicial individualization of punishment occurs within a legal framework. Additionally, judicial individualization must be achieved through the use of means and criteria for evaluation, also determined by law [1, p.408; 2, p.178].

In the process of selecting individualization means, judges are required to consider certain legal criteria, i.e., requirements that the court must follow when determining and applying punishment.

Thus, individualization criteria represent categories of data and elements that the court is legally obligated to consider in the judicial individualization of punishment [3, p.91].

Depending on their scope, doctrine distinguishes between general individualization criteria, which must be considered in any situation of punishment individualization, and special individualization criteria, which apply only in cases expressly provided by law [3, p.91; 4, p.522].

General criteria are those that must be considered without exception when individualizing any punishment. These criteria are mandatory for the court when individualizing any punishment, determining the category and term of the principal punishment, and establishing both principal and complementary punishments.

General individualization criteria cannot be used in isolation, but must be considered collectively, i.e., they are taken into account together when determining and applying punishment [5, p.9; 6, p.349].

Elaborating on the above, some authors argue that a distinction must be made between the valorization of criteria and their content: the combined use of retained criteria to individualize punishment does not mean merging them or assigning equal importance to each in practice. Depending on the case, some may prove more significant than others, and the court may establish a hierarchy of their relevance to the case at hand [3, p.100; 7, p.381].

To assist courts in better evaluating the gravity of the committed offense and the

dangerousness of the offender, current criminal legislation regulates the general criteria for punishment individualization. Article 75(1) of the Criminal Code of the Republic of Moldova stipulates that the law establishes certain requirements or criteria that courts must follow when applying punishment in a specific criminal case. According to these requirements, the punishment imposed on a person found guilty of committing a crime must be: a) fair; b) within the limits set in the Special Part of the Criminal Code; c) in strict compliance with the provisions of the General Part of the Criminal Code; d) proportionate to the gravity of the committed offense; e) considerate of the motive for committing the offense; f) considerate of the offender's personal circumstances; g) considerate of case circumstances that mitigate or aggravate liability; h) considerate of the punishment's influence on the correction and re-education of the offender; i) considerate of the offender's family living conditions.

Here, it is clarified that in legal doctrine, general individualization criteria are classified according to the principles of criminal liability: legality of punishment, fairness of punishment, and individualization of punishment [8, p.386; 5, p.10]. In this sense, it is evident that both the principle of legality and other principles are reflected in the general criteria for punishment individualization. However, the following general criteria most closely align with the principle of legality: punishment must be applied *within the limits set in the Special Part of the Criminal Code* and *in strict compliance with the provisions of the General Part of the Criminal Code*. Naturally, punishment individualization is organically linked to the principles of legality and fairness. If punishment is not individualized, it is evidently illegal, even if the formal provisions of the law are respected (i.e., the punishment is within the limits set in the Special Part of the CC). At the same time, such punishment would also be unfair. Although punishment individualization is not explicitly stated in Article 75(1) CC, it arises from the general criteria through which it is manifested. Thus, punishment individualization requires adherence to the following general requirements outlined in Article 75(1) CC: when determining punishment, the court must consider: a) the gravity of the committed offense; b) the motive for the offense; c) the offender's personal circumstances; d) case circumstances that mitigate or aggravate liability; e) the influence of the punishment on the correction and re-education of the offender; f) the offender's family living conditions.

It must also be noted that Article 75 of the current Criminal Code, compared to Article 36 of the 1961 Criminal Code, formulates the general criteria for punishment individualization more clearly and comprehensively. Thus, the current penal law retains provisions from the 1961 Code, such as: the court applies punishment within the limits set in the Special Part of the Criminal Code, in strict compliance with the General Part's provisions, and considers the nature and degree of social danger of the committed offense, the offender's personal circumstances, and case circumstances that mitigate or aggravate liability. At the same time, the current Criminal Code introduces new provisions limiting the judge's discretion, thereby restricting judicial subjectivity in punishment individualization. Notably, new provisions oblige the court to impose a fair punishment on a person found guilty of committing a crime, considering the motive for the offense, the punishment's influence on correction and re-education, and the offender's family living conditions.

Special criteria, as indicated, apply only in specific cases expressly provided by law. These criteria amplify or specify the general criteria and must be considered alongside them when determining and applying punishment.

Special individualization criteria, unlike general criteria, apply separately depending on the specific circumstances of the case. Additionally, judicial practice frequently encounters situations where two or more special criteria must be applied. Such situations

are not regulated by the legislator in the Criminal Code, leaving their resolution to the court's discretion [5, p.10].

The process of punishment individualization is specifically regulated by the provisions of Chapter VIII of the General Part of the Criminal Code (Articles 75-88). These provisions are supplemented by others on punishment individualization found in other chapters of the General Part (e.g., Article 23^1(2), Article 64(3), Article 70(3^1), etc.), as well as provisions in the Criminal Procedure Code regarding the reduction of punishment if the accused's detention conditions violate rights guaranteed under Article 3 of the European Convention on Human Rights, per the jurisprudence of the European Court of Human Rights (Article 385(5) of the Criminal Procedure Code).

This institution comprises a set of regulations that the court must follow. This framework includes, *firstly*, provisions independent of the specifics of the criminal case and applicable to the individualization of any punishment. As noted, these are termed general individualization criteria in criminal law and are outlined in Articles 75, 76, and 77 of the Criminal Code. The placement of mitigating circumstances (Article 76) and aggravating circumstances (Article 77), which form part of the general individualization criteria, in separate articles of the Criminal Code, is dictated by legislative drafting rules to avoid complicating the interpretation of Article 75.

Secondly, regulations that apply only when certain expressly provided circumstances exist, termed special criteria in criminal law theory. The Criminal Code of the Republic of Moldova provides special criteria for punishment individualization in cases such as: applying punishment according to the effects of mitigating and aggravating circumstances (Article 78), applying a more lenient punishment than prescribed by law (Article 79), applying punishment in cases of plea agreements and cooperation agreements (Article 80), applying punishment based on evidence obtained during the criminal investigation (Article 80^1), applying punishment for an unconsummated offense (Article 81), applying punishment for recidivism (Article 82), applying punishment for complicity (Article 83), applying punishment in cases of concurrent offenses (Article 84), applying punishment in cases of cumulative sentences (Article 85), applying punishment in cases of enforcing foreign judgments (Article 86), etc.

The general individualization criteria outlined above, aside from the gravity of the offense and the offender's personal circumstances, also emphasize the need to consider circumstances that mitigate or aggravate punishment. Mitigating and aggravating circumstances, though not part of the constitutive elements of the offense, relate either to the act itself, the offender, or both. These circumstances influence the degree of social danger of the act, the offender's dangerousness, and thus ensure punishment individualization in each specific case. Mitigating and aggravating circumstances are provided in Articles 76 and 77 of the Criminal Code. Notably, the list of aggravating circumstances is exhaustive, while the list of mitigating circumstances is approximate; thus, courts may consider other unlisted circumstances as mitigating.

In criminal law theory, there has long been a lack of consensus on the role of mitigating and aggravating circumstances. Some authors argued that these circumstances influence the degree of culpability [9, p.136], others held that they mitigate or aggravate the punishment imposed by the court [10, p.101], while some maintained that they mitigate or aggravate the social danger of the act [11, p.159; 12, p.68–69].

In the current Criminal Code, the legislator emphasized the role and importance of mitigating and aggravating circumstances, explicitly stating that they influence only the

determination of punishment, i.e., mitigating or aggravating it.

It must be clarified that the mitigating or aggravating circumstances outlined in Articles 76 and 77 of the Criminal Code of the Republic of Moldova should not be confused with qualifying or privileging signs that share the same terminology, but are included in the constitutive elements of certain offenses. If a circumstance is legally defined as a qualifying or privileging element of an offense, it cannot, as a general rule, be considered again by the court when determining punishment. Article 76(3) and Article 77(2) of the Criminal Code introduce provisions excluding the possibility of double-counting the same circumstance as both a mandatory element of the offense and a mitigating or aggravating factor.

Therefore, mitigating and aggravating circumstances are situations, attributes, qualities, or other factual data external to the offense's constitutive elements that directly or indirectly relate to the offense or the offender, increasing or diminishing the harmful degree of the act and the offender's dangerousness, thereby leading to mitigation or aggravation of punishment.

In specialized literature [2, p.182–183; 7, p.385–387; 13, p.390–394; 14, p.470–473; 15, p.427–428; 16, p.321; 17, p.262–263; 18, p.458; 19, p.38–103], multiple classifications of circumstances are proposed based on various criteria. At this point, we will briefly analyze those that lead to distinctions relevant to practical application:

a) Mitigating and aggravating circumstances – distinguished by their effect on punishment, the former reducing punishment and the latter increasing it.

b) Legal and judicial circumstances – legal circumstances are expressly provided by law, and once established, oblige judges to consider them. They always modify punishment in the same direction (either mitigating or aggravating). Judicial circumstances are not determined by law and are left to the court's discretion. Notably, the current Criminal Code regulates this distinction only for mitigating circumstances, as aggravating circumstances do not allow judicial discretion.

c) Circumstances related to objective or subjective elements of the offense – distinguished based on the offense's constitutive elements. For example, objective mitigating circumstances include committing the offense under severe personal or family conditions (Article 76(1)(c)), while objective aggravating circumstances include targeting a minor, pregnant woman, or someone in a vulnerable state (Article 77(1)(e)). Subjective mitigating circumstances include the offender being a minor or under 21 (Article 76(1)(b)), while subjective aggravating circumstances include committing the offense out of prejudice (Article 77(1)(d)). This classification aids courts in detailed analysis.

d) Circumstances antecedent, concomitant, or subsequent to the offense – distinguished by their timing relative to the offense. This distinction is relevant for punishment individualization.

In doctrine, circumstances are further classified into general and special, real and personal, and known or unknown to the offender.

As noted, the current Criminal Code emphasizes the role of mitigating and aggravating circumstances, explicitly stating that they influence only the determination of punishment.

Here, distinctions must be made between retaining circumstances and their effects. Once mitigating or aggravating circumstances are verified, their retention is mandatory for the court. Retained mitigating circumstances (legal or judicial) obligatorily reduce punishment, while aggravating circumstances increase it. The court must individualize punishment within the limits set for the offense in the Special Part and in accordance with Article 75 CC.

The effects of mitigating and aggravating circumstances are regulated by Article 78

CC. Three situations are outlined: a) only mitigating circumstances and their effects are retained; b) only aggravating circumstances and their effects exist; c) a concurrence of mitigating and aggravating circumstances and their effects.

Article 78(1) of the Criminal Code stipulates that mitigating circumstances identified by the court during the commission of the offense result in either a reduction or substitution of the principal punishment. The legislative wording, "the principal punishment shall be reduced or substituted", imposes a mandatory obligation to mitigate the principal punishment. These effects apply solely to principal punishments and involve either reducing the statutory punishment limits or altering the nature of the principal punishment. It is important to note that the reduction of special punishment limits occurs only once, regardless of the number of mitigating circumstances identified. Therefore, the recognition of multiple mitigating circumstances in favor of the offender does not result in cumulative reductions, as the special punishment limits are reduced only once, though this may influence the extent of the reduction.

Under Article 78(1) letters a)-c) of the Criminal Code, cases involving the reduction of punishment limits or substitution of the principal punishment due to mitigating circumstances are regulated as follows, if the statutory minimum imprisonment term provided in the relevant article of the Special Part of the Criminal Code is less than 10 years, the punishment may be reduced to this minimum (Article 78(1)(a)), if the statutory minimum imprisonment term is 10 years or more, the extent of reduction is left to the court's discretion, provided the imposed punishment exceeds the statutory minimum. If the principal punishment prescribed by law is a fine, it may be lowered to the statutory minimum specified in the relevant article of the Special Part (Article 78(1)(b)). The use of phrases such as "may be reduced" or "may lower" clarifies that the court is not obligated to reduce the punishment to the statutory minimum but retains the discretion to do so.

In point 10 of Supreme Court of Justice Plenary Decision No. 8 of November 11, 2013, it is emphasized that reductions under Article 78(1) letter a) or b) must correspond to the number of mitigating circumstances identified. A punishment reduced to the statutory minimum is deemed equitable only when multiple mitigating circumstances enumerated under Article 76 are established. Additionally, once mitigating circumstances are recognized and the punishment is reduced (e.g., to the minimum), these circumstances cannot serve as grounds for applying Article 90 of the Criminal Code, as this would grant dual legal weight to the same factual situation.

Article 78(1)(c) provides that if life imprisonment is prescribed for the offense, it must be replaced with imprisonment ranging from 15 to 25 years. The phrase "it shall be replaced with imprisonment" imposes a mandatory substitution. However, Moldovan criminal law does not prescribe life imprisonment as a standalone punishment, but as an alternative to imprisonment between 15 and 20 years. Consequently, when mitigating circumstances exist, the court must select imprisonment within these statutory limits. Once the type of punishment is determined, the court must then establish its duration or quantum.

In this context, legal scholars [5, p.37] have rightly noted that setting a maximum special limit of 25 years for imprisonment as a substitute for life imprisonment contradicts the sanctions outlined in the Special Part of the Criminal Code, which prescribe life imprisonment only as an alternative to imprisonment between 15 and 20 years. Therefore, when mitigating circumstances exist in cases where life imprisonment is prescribed as an alternative to imprisonment, life imprisonment is not "replaced", but simply not applied; instead, the alternative punishment of imprisonment within the statutory limits is imposed.

Mitigating circumstances also affect complementary punishments: if the court identifies mitigating circumstances, it may remove non-mandatory complementary punishments (Article 78(2)). Unlike the mandatory reduction or substitution of the principal punishment, the removal of complementary punishments is discretionary, not obligatory.

Point 10 of the aforementioned Supreme Court Decision clarifies that non-mandatory complementary punishments ("with or without") may be removed if mitigating circumstances are identified. Mandatory complementary punishments may only be removed under the conditions of Article 79(1) CC.

Under Article 78(5), if exceptional mitigating circumstances exist, the court may impose a punishment below the statutory minimum, a milder category of punishment, or waive mandatory complementary punishments (Article 79(1)).

The effects of aggravating circumstances are governed by Article 78(3), which succinctly states that the court may impose the maximum punishment prescribed in the relevant article of the Special Part. This establishes a rule of discretionary aggravation, leaving the decision to the court. Unlike mitigating circumstances, which mandate reduction or substitution, aggravating circumstances grant the court the right, but not the obligation, to impose the maximum punishment.

The term "maximum punishment" in Article 78(3) does not obligate the court to apply the harshest punishment among alternative sanctions, but refers to the statutory maximum of the chosen punishment category [5, p.38].

Aggravating circumstances affect only principal punishments [20, p. 10].

The legislator's concern to establish the legal framework for applying punishment is evident not only in regulating the effects of mitigating or aggravating circumstances on punishment, but also when both mitigating and aggravating circumstances coexist in the same case [14, p.485]. In such situations, the question arises as to how to mitigate or aggravate the punishment imposed on the accused.

According to Article 78(4) of the Criminal Code, in cases of concurrence of aggravating and mitigating circumstances, reducing the punishment to the statutory minimum or increasing it to the maximum provided in the corresponding article of the Special Part of the Criminal Code is not mandatory. Thus, when aggravating or mitigating circumstances coexist, determining the duration and quantum of punishment within the limits prescribed by the Special Part of the Criminal Code for the committed offense is left to the court's discretion. Additionally, reducing the punishment to the statutory minimum or increasing it to the maximum is not obligatory. In other words, in such cases, the court may prioritize either mitigating circumstances – thereby lowering the punishment toward the statutory minimum – or aggravating circumstances – raising it toward the statutory maximum. For example, if a criminal case involves exclusively aggravating circumstances or if these qualitatively outweigh mitigating ones, the imposed punishment must align closer to the statutory maximum prescribed for the offense. Conversely, if exclusively mitigating circumstances exist or they qualitatively outweigh aggravating ones, the punishment must align closer to the statutory minimum.

Furthermore, if the court identifies only one aggravating circumstance, the imposed punishment will be milder compared to cases with multiple aggravating circumstances. When only aggravating circumstances exist, the punishment imposed on the guilty person will be harsher than in cases where both aggravating and mitigating circumstances coexist. In all cases, however, the punishment must remain within the limits prescribed by the Special Part of the Criminal Code for the committed offense.

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EMPIRICAL STUDY ON THE WHISTLEBLOWING WITNESS FOLLOWING THE LEGISLATION IN ROMANIA ON RESPECT FOR THE RIGHT TO PRIVACY

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Summary

Whistleblower witnesses are people who sometimes play a decisive role in uncovering crimes and resolving complex cases. The issue of respecting the right to privacy and guaranteeing it during the criminal prosecution phase of the whistleblower witness remains a sensitive subject. In this sense, protection is imposed as an obligation of the state, since their life, bodily integrity or freedom are threatened as a result of possessing information or data regarding the commission of serious crimes, which they have provided or agreed to provide to the judicial authorities. Researching and resolving the deficiencies found thus contributes to improving the quality of the act of justice.

From this point of view, the research project is primarily due to the analysis of the establishment of guarantees that whistleblower witnesses benefit from, and not only, and regarding the assessment of the applicability of criminal procedural norms by the competent state bodies from this point of view, of inclusion in the protection program from the point of view of the right to privacy.

Keywords: whistleblower witnesses, criminal prosecution, protection, program, rights, privacy.

Introduction. The study's importance and necessity are to delimit the interest of the whistleblower witness in question on the occasion of the denunciation. In this sense, the interest is given by obtaining a reduction in the sentence, but also by including him in the protection program to evade the criminal case, and by the truth sought, the cause of respecting the right to privacy. This study imposes the need to offer such suggestions to obtain an adequate social reaction regarding such situations.

Methods and materials applied. The research methods include, in order to achieve the outlined objectives, a complex of methods, both theoretical and empirical. Thus, the logical method is applied that uses the induction technique (by studying the laws in force) and the deduction technique, to clarify the current situation, both through own documentation and through the norms that lead to the non-respect of the right to privacy of whistleblower witnesses during the criminal prosecution phase. In addition, the analytical method allows an analysis of the laws in force, a method that we apply to this research.

The scientific research methodology can, however, also be considered a practical one, as the empirical method applied is presented following personal documentation.

Discussions and results obtained. A person who is a witness and has committed a serious offense, and before or during the criminal prosecution of the county denounces

or facilitates the identification and prosecution of other persons who have committed such offenses *benefits from a reduction in half of the fine limits provided for by law* (art. 19 of Law No.682/2002)[1] [1]. Hence the interest in denouncing and thus obtain the effects of the protective measure (e.g., non-disclosure of personal data, etc.), which would lead to their non-identification as whistleblower witnesses under this prerogative of respecting the right to privacy and the protection offered by the legislation!

Denunciation is one way of notifying the criminal prosecution bodies and is, according to Art.290 of the CPP RO, the notification of the commission of a crime. Denunciators thus acquire the status of witnesses, being included in the protection program of threatened witnesses. The evidentiary value of the denunciator's statement may be "influenced" in the sense of telling the truth, of incriminating without the ability to mislead the criminal prosecution body or the court through the data and information presented.

We are talking about the protection measures applied to the denounced witnesses; they must be established from the beginning of the denunciation. The criminal investigation bodies can apply appropriate measures to establish the truth through the following questions: "Who? What? How? Where? and Why?" [2, p.303], followed by verifications that always lead to the truth sought. For example, in the Criminal Sentence No.90/14 March 2005 of the Bihor Tribunal of RO, pronounced in File No.3857/2004, final by Criminal Decision No.5495/29 of September 2005 of the High Court of Cassation and Justice [3, &4], the statements given by the witnesses who denounced were considered truthful and were different in the criminal investigation phase from those recorded during the judicial investigation. In this sense, the statements from the criminal investigation phase remained truthful. The decision corresponds to the need for questions and is corroborated with the rest of the evidence (witnesses, documents).

However, victim protection measures are interrelated with the right to privacy, and both aim to ensure the dignity of whistleblowers and their privacy, as well as the real victims' physical, psychological, and emotional safety.

By definition, protective measures and the right to privacy involve interacting to provide victims with a safe and respectful environment against threats. Problems arise in situations where personal interests occur. In such situations, we are not talking about respecting the right to privacy, even if, due to the protective measure, such whistleblower witnesses will not be exposed for identification.

Regarding the statement of whistleblower witnesses who have become protected, according to Art.125 CPP RO, (...) practically establishes the obligation to corroborate the statements of threatened witnesses or vulnerable witnesses with other evidence in the file, only to this extent can a solution be ordered to establish the guilt of the defendant" [4, p.524] and the right to a private life of the other parties against whom the complaint was filed is respected.

[1] In the same sense, but without being similar, there were also the provisions of Art.16 of Law No.143/2000 on combating illicit drug trafficking and consumption (Official Gazette No.362 of 3 August 2000), Art.9 para.(2) of Law No.39/2003 on combating organized crime (Official Gazette No.50 of 29 January 2003); the provisions of Art.18 of Law No.508/2004 on the establishment and functioning of the Directorate for the Investigation of Organized Crime and Terrorism Offences (Official Gazette No.1089 of 23 November 2004); Art.19 of Legislative Decrete No.43/2002 on the National Anti-Corruption Directorate (Official Gazette No.244 of 11 April 2002), repealed by Law No.503/2002.
Law No. 682/2002 is a fundamental law, a general law, and all other laws are special laws, in which case the principle of „the special derogates from the general" will apply, with special provisions taking priority.

"*Per a contrario*, the court may establish the defendant's innocence, basing its acquittal decision to a decisive extent on the statements of these protected witnesses. (...) Practically, in terms of evidence, protected and vulnerable witnesses are assimilated, by the will of the law, with undercover investigators (or with real identity – *n.a.*) and collaborators" [4, p.524].

"Evidence obtained from witnesses in circumstances where the rights of the defense could not be ensured at a normal level required by the European Convention must be analysed with extreme care. The conviction of an accused must not be based exclusively or to a decisive extent on anonymous testimony (ECtHR, Krasniki v. the Czech Republic, Judgment of 28.02.2006, § 76-79; ECtHR, Visser v. the Netherlands, Judgment of 14.02.2002, § 43-46; Doorson v. the Netherlands, Judgment of 26.03.1996, § 69-76; Van Mechelen and others v. the Netherlands, Judgment of 23.04.1997, § 52-55; Kostowski v. the Netherlands, Judgment of 20.11.1989, § 42)" [5, p.434].

For example, in *Criminal Decision No.4286/18 September 2007*, Î.C.C.J. RO refers to "the lack of any indication regarding the commission of a crime, by using the reporting witness regarding the organisation of a flagrant, in the sense of attempting to hand over to the defendants a sum of money that had been forensically trapped, which had not been requested by the defendants and the recording of the conversations on this occasion, with a tape recorder made available by the criminal investigation bodies, without the authorisation required by law and without any indication that the defendants were preparing to commit any crime, is equivalent to attempting to provoke a crime of bribery" [6], we wonder what the interest of the reporting witness is, in the situation in which he evades the application of the law. Moreover, in the *case of ECtHR Ludi v. Switzerland*, of 15 June 1992 [7], concerning the repeated attempts by the undercover officer, which ultimately led to the acceptance of the sale of a quantity of cocaine, there must be no such provocation. In this case, "the Swiss authorities were informed by the German police that the applicant, who was in Switzerland at the time, had asked a former prison colleague for a sum of money to buy drugs. The police sent an undercover officer who contacted the applicant, proposing to sell him a quantity of cocaine, which he accepted after several meetings" [7]. In this case, we can speak of an instigation by state bodies. That is precisely why the right to private life is and must be guaranteed by state bodies in the application and sanctioning of established offences, not by instigation, falsification, or any other means of protection and under the imperative of the measure of protection of these whistleblower witnesses.

General rules. The criminal complaint filed by the insulted person must contain information and data of a decisive nature and be specific in the context of criminal prosecution to lead to the identification and prosecution of other persons who have committed serious real offences [8]. Thus, it is irrelevant if the whistleblower, in the basic file in which he was heard as an insulted person, did not recognise the persons against whom he filed the complaint from the photographs or did not identify them by name and surname and only by their nickname or diminutive, as long as the persons were identified and sent to the county to follow up on the investigations initiated following the complaint filed by the insulted person and represent the whole truth. However, the provisions of Art.19 of Law No.682/2002 are not applicable in the case of the freedom of conscience provided for by the law since the simple oath that the accused has filed four reports does not mean that he will receive the benefit of halving the acceptable limits, only inclusion in the Witness Protection Program. On this occasion, the report must be analysed before being included in the program.

If the prosecutor's office finds that the insulted person filed a complaint, which may have been registered as a criminal case, and following the complaint and other information provided, different persons may have been identified as having committed serious offences, the provisions of Art.19 of Law No.682/2002 become applicable, even if the investigations have not been finalized. Suppose the whistleblower has gone back on the statements in an attempt to discredit the person reported or has been arrested based on the complaint. In that case, this does not remove the right to legal benefits since the law does not provide for such a sanction. The conditions stipulated by law were fulfilled in the case; respectively, the denunciation of the insulted person resulted in the arrest of the denounced person and automatically determined the incidence of the provisions regarding the penalty reduction.

The procedural attitude of the insulted person is an element that can be considered in the judicial individualisation of the case, the court following a contest of aggravating and mitigating factors. We can call it an attempt to exonerate from criminal liability.

For the application of Art.19 of Law No.682/2002, it is not mandatory for the person reported to have committed the same type of offense as the informant, but it is necessary for the offenses to fall into the category of serious offenses, as regulated by Law No.682/2002[2] [1].

Witness capacity, within the meaning of Art.2 letter a) paragraph 3 of Law No.682/2002 (a person who is in the course of the execution of a private arrest warrant and, through the information of a decisive nature provided to him, contributes to the discovery of the truth in cases concerning serious offences), does not confer on such a person the right to request a reduction of the sentence or to challenge the execution, but only the possibility of being included in the Witness Protection Program in accordance with Art.4 para.(1) of Law No.682/2002.

Therefore, since the application of the provisions of Art.19 of Law No.682/2002 is a matter of substance, it will be considered in the individualization of the addressee with an objective criterion, and the task of applying Art.19 of Law No.682/2002 may only be directed to the attachment rooms.

In the case in question, the accused committed two offenses, of which only one is considered a serious offense within the meaning of Art.2 letter h) of Law No.682/2002, the reason for reducing the sentence provided for in Art.19 of Law No.682/2002 does not apply unless it constitutes a serious offense.

For example, the defendant does not benefit from the provisions of Art.19 of Law No.682/2002 if he has committed an offense provided for in Art.27 para. (3) of Law No.365/2002 on electronic commerce, since such an offense does not fall within the scope of the serious offenses mentioned in Law No.682/2002.

Similarly, no offense provided for in Art.4 para.(1) of Law No.143/2000, possession of drugs for personal consumption, cannot be included in the scope of the notion of drug trafficking offenses for the purposes of applying the provisions of Art.19 of Law No.682/2002.

[2] Art.2 letter h) Law No.682 of December 19, 2002, republished, on witness protection (Official Gazette No. 288 of April 18, 2014) – "serious crime is a crime that falls into one of the following categories: genocide and crimes against humanity and war crimes, crimes against national security, terrorism, murder, crimes related to drug trafficking, human trafficking, trafficking in minors, money laundering, counterfeiting of coins or other valuables, crimes related to non-compliance with the regime of weapons, ammunition, explosive, nuclear or other radioactive materials, corruption crimes, as well as any other crime for which the law provides for a prison sentence with a special maximum of at least 10 years".

Although surprising, no organized crime offense provided for in Art.7 para.(1)-(3) of Law No.39/2003 (currently the establishment of an organized criminal group provided for in Art.367 of the Romanian Criminal Code) is not part of the category of serious offenses as stated in Art.2 letter b) of Law No.682/2002, as a distinct offense, not being included either in the list of expressly listed offenses or in the category of offenses with a minimum sentence of 10 years in prison or more.

Therefore, in the case of this offense, the provisions of Art.367 para.(5) of the Romanian Criminal Procedure Code apply, but the essential condition is that the informant has been sent to the county for one of the offenses provided by Art.7 of Law No.39/2003 (current Art.367 para.(l)-(3) of the Romanian Criminal Procedure Code) [14]. In the case in question, the informant is not sent to the county for the commission of the offense provided for in Art.7 of Law No.39/2003 (current Art.367 para.(l)-(3)), then he is excluded from the benefits of the provisions of Art.9 para.(2) from Law No.39/2003 (this Art.367 para.(5) SR ROM) and amended from the provisions of Art.19 of Law No.682/2002.

The difference between the provisions of Art.19 of Law No.682/2002 and Art.367 para.(5) SR ROM (former Art.9 para.(2) from Law No.39/2003) refers to the person reported, namely one or more members of an organized criminal group. It is not important whether these are members of the same organized criminal group to which the accused informer belongs or members of another organized criminal group.

If the offenses committed by the informer do not fall within the scope of the serious offenses mentioned in Law No.682/2002, but this denounces and facilitates the prosecution of other persons. For those who have committed serious crimes, the court will respond to this circumstance regarding the substance of judicial mitigation, not to be ignored in individualizing the islander's attitude towards collaboration with judicial bodies. The court investigated and indicated the change of attitude towards the law and the order of the public and the reduced social risk of insult.

The denunciation or self-denunciation must constitute only a means of notification to the judicial authorities and not a means of evidence within the meaning of Art.97 CPC RO. Therefore, the oath that the informant is later heard as a witness and proposed to be used in such proceedings is not of its nature (even if it is done) to lead to the conclusion of the unconditional probative value of such a statement, the statement must be proven with other means of evidence.

The use of statements of informant witnesses in exchange for immunity or other advantages constitutes an essential instrument of national authorities in the fight against serious crimes. The admissibility of evidence is governed by the rules of national law, which establish the truth in a case.

In essence, the "fair trial" convention includes the fundamental right to adversarial proceedings, which requires that the evidence be administered in the presence of the accused in public proceedings to enable him to present arguments in adversarial proceedings in his absence. However, this does not mean the witness's statement must always be taken in public proceedings to be admitted as evidence. Hearing the witness in public proceedings is impossible in certain situations, such as the witness's safety and the right to private life. However, the use as evidence of the statement taken during the criminal investigation (preliminary investigation) is not incompatible with paragraphs 3 and 1 of Art.6 of the European Convention on Human Rights if the accused has the opportunity to put questions to the witness, even if the witness refuses to answer those questions.

Although, in the very nature of the whistleblower's trial, the statement may be called into question in terms of objectivity since, in principle, the whistleblower is an interested witness – being the person who benefits from the cause of the complaint – the statements of whistleblower witnesses cannot be excluded from the plan based on the free summary of objectivity [9], but rather This is a sworn testimony. The statement of the whistleblower witness must be corroborated with other evidence, which may come from sources independent and external to the whistleblower [9]. The defendant's lawyer must also discuss it in a public trial.

The statement of the witness to whom immunity has been granted cannot constitute any evidence or decisive evidence in support of the conviction of the accused and must be treated with all due caution. Therefore, it violates the provisions of Art.6 of the European Convention on the Rights of the Child. The fact that the accused and his lawyer did not have the opportunity to ask the only witness in the protection program questions about his testimony was the basis for the accused's conviction. The *case of Gal v. Romania* [10], of 30 August 2022, is eloquent. The Cluj Court of Appeal refused to hear the whistleblower witness, who was transformed by the DNA into an informant and thus to hide the possibility of being listened to by the court. The whistleblower witness's testimonies constituted essential elements for the applicant's conviction, as he was one of the direct witnesses. According to the testimonies made by the applicant, the prosecutor C.M. would have forced her to make denunciations against friends and acquaintances. She refused, and shortly afterwards, she was sent to trial for complicity in influence peddling precisely because of the testimony of the denunciator, who became an informant [10]. However, the ECtHR recalled in its case law – the cases of Ekbatani v. Sweden, Constantinescu v. Romania, and Mircea v. Romania – "the trial of a person for the first time in the last instance by a jurisdiction which, without hearing, must assess the facts and the applicable law and investigate whether the person is guilty or innocent of committing a criminal offence, violates the fairness of a procedure under Art.6 para.1, considering that the situation is similar" [11].

Although Art.6 of the ECHR, the prosecution is immune from communicating all documents in the case file that may contain evidence against the accused, such as the case file based on which the whistleblower witness was convicted. The text of the order in this and the prosecution are not such as to be strictly linked to the commission of an offence by the accused. However, such non-communication does not violate the right to privacy and the Convention's implied right. Still, there are benefits, such as the right to privacy being violated by these whistleblower witnesses in the event of untruths.

The termination of the witness protection measure must intervene. Thus, the right to privacy is no longer violated if, during the trial, the protected witness gives false testimony, even if the testified witness does not fulfill the obligations assumed by signing the test form or if he has communicated false information to anyone regarding his situation, and so on.

The statements of interested persons can be evaded. In this sense, we can speak of private recordings that constitute evidence in cases without the authorisation of the judge of rights and freedoms. Obtaining a result, such persons who receive a recording that does not follow the truth can file a complaint and thus request approval from the judge of rights and freedoms to hold them criminally liable for other offences. The interest in sanctioning may differ from person to person. Thus, in the *case of Van Vondel v.*

Netherlands, of 25 October 2007 [12], the recording of conversations made by a third party and the technical equipment provided by the state authorities violates obtaining such a recording – also, *the Criminal Sentence No.5/F/7 February 2005 pronounced by the Court of Appeal of Braşov, in file No.495/P/F/2005, which became final by Criminal Decision No.4177/7 of July 2005 of the High Court of Cassation and Justice, in file No.1733/2005* [13], held that the recordings in question, the first a recording of a telephone conversation between the defendant and the informant and the second a private conversation between the same persons recorded with a device on the informant, did not have the authorisations required by law. In this regard, we can observe the circumvention of the authorisation of the judge of rights and freedoms precisely because of the possibility of private recordings, followed by the denunciation, for interest and obtaining evidence for sanctioning and investigation. As mentioned in the *case M.M v. Netherlands* [14], the judgment of 8 April 2003, "the recording of the applicant's telephone conversations by a private individual, assisted by the public prosecutor, who suggested that he record the telephone conversations, and by the police officers who installed the recording system at his home, both judicial bodies acting in the exercise of their official duties, playing a decisive role in the whole affair, engages the State's liability".

Conclusions. The protection of whistleblowers is a fundamental right guaranteed by the state and implemented in practice. It fulfills whistleblowers' rights and obligations. On the other hand, it benefits the state, which benefits from the role of whistleblowers in implementing its policies.

Whether we are talking about procedural protection or the Witness Protection Program, it is a complex of extra-procedural measures aimed at ensuring the safety of whistleblower witnesses who are subject to a state of risk and risk of being prosecuted for their contributions of a decisive nature in complex cases, the obligation of the state is the same – respecting their rights to private life, by protecting them against any possible intimidation, and including them in the program, but also the obligation to establish the entire truth, by applying appropriate measures.

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THEORETICAL-PRACTICAL OBJECTIVES AND SOLUTIONS REGARDING THE EFFICIENCY OF THE SPECIAL INVESTIGATION ACTIVITY

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Summary

The article presents a special study in the field of special investigative activity being at the intersection of several sciences, namely: criminal law, criminal procedure, etc., which proves the complex nature of the problem under study. The experience of applying the provisions of the Law on Special Investigation Activity in practice often signals us about the lack of finalization of certain norms in the law, their lack of coordination with criminal, criminal procedural and other legislation, which negatively influences the results of the fight against crime, the efficiency of the activities of the authorities whose specialized subdivisions carry out special investigative and criminal prosecution activities in the direction of detecting, counteracting, investigating/ researching, discovering and preventing crimes, as well as searching for criminals.

Keywords: special investigation activity, crime fighting, effectiveness, criminal law, criminal process, criminal investigations, investigation officer, evidence, respect for human rights, freedoms, dignity.

Introduction. There are various fragmentary descriptions about the specific activity of special services/ subdivisions in national and international literature. However, less is known about the legal regulation of the Special Investigation Activity, because it is not possible to find in the public scientific and didactic literature generalized and systematized objective materials about these regulations. Simultaneously with the accumulation of knowledge about the sources of legal regulation of this activity in the past and present, a pressing need arose for the description of this interesting topic. Lately, a visible development of the process of regulating special investigative activity has been observed; often this is done spontaneously, without taking into account the "lessons of history" and conclusions regarding mistakes and confusions on the one hand and past performances and successes on the other.

Since gaining independence, Republic of Moldova has gone through various difficult periods, accompanied by contradictions between the three powers of the state: legislative, executive and judicial, as well as negative processes in the political, economic

and social spheres of society's life. Has the situation changed radically during the recent years? Recent estimates of society's development show us that some negative factors related are not completely uprooted. This is due to a weak legal control mechanism, the inadequacy of normative acts, low level of activity of some civil servants from various public state authorities etc.

In the following, we propose to address the streamlining of the Special Investigation Activity in order to assess how it can be used in the process of investigating "*...investigation of alleged or committed crimes...*" [1, Art.1, para.(2)].

Methods and materials applied. Theoretical, normative and empirical material was used in the preparation of this publication. The research of the current subject was possible through the application of several scientific investigation methods, specific to the theory of special investigative activity: logical method, comparative analysis method, systemic analysis, etc.

Research purpose. The purpose of this work is to analyze in-depth the efficiency of the Special Investigation Activity, based on the statements of researchers in the respective field and to develop recommendations for improving the legal basis that regulates this specific activity.

Depending on the intended purpose we aim to achieve the following objectives: a) research of the legal regulation of the special investigative activity; b) development of proposals for the improvement of the normative regulations regarding the special activity of investigations in the context of community law; c) advancement of theoretical-practical solutions regarding the efficiency of the Special Investigation Activity.

Discussions and results obtained. The need to improve the legislation on special investigations arises due to several factors, namely: socio-economic, political, criminological, the last having a decisive influence. The increase in the number of crimes [12], the hidden nature of the motives and conditions that favor the occurrence of crimes; the high level of latent crimes, the increase in the level of organized crime, the transformation of crime into a professional occupation, the aggressiveness of the defense of criminal interests, the internationalization of criminal activity and other circumstances dictate the need to improve the legal regulation of the Special Investigation Activity. Such a need is also conditioned by the fact that, at present, the entire system of protection of legal norms does not effectively ensure the solution of the questions of fighting crime, as a result of which society as a whole remains unprotected.

Under current conditions, a new correlation has emerged between the institutions of the Criminal Code and the legislation on Special Investigation Activity, which:

a) Stimulates the research activity of the subjects of the Special Investigation Activity;

b) Stimulates the post-criminal activity of the objections of the Special Investigation Activity;

c) Ensure the rights and freedoms of individuals in the process of carrying out special investigative measures [2, p.66].

Referring to the emergence of these legal institutes as a result of the synchronous reform of criminal legislation and the formation of the Special Investigation Activity, shortcomings in the legal regulation in criminal legislation are noted in the legal literature and amendments are proposed to improve the existing situation [3, p.18-22].

In this regard, there is a pressing need to determine at the legislative level the circumstances which will allow tthe release from criminal liability of subjects who carry out

special investigative activity (special investigative measures), forced in certain situations, while carrying out investigative missions [9, Art.36], and to exceed the limit of the law, strictly speaking, to "commit" crimes.

Taking into account that the Special Investigation Activity precedes the criminal trial, serves the interests of the latter, the results of which are achieved in the criminal-procedural order, it is fair to consider that the thoroughness and efficiency in this sphere largely derive from the criminal and criminal-procedural activity. Criminal procedural legislation practically serves as a benchmark for the Special Investigation Activity, determining the formation of the special investigation practice. For these reasons, we can state that, depending on the level of coordination of special investigative legislation with criminal procedural legislation, of course, it also depends on the effectiveness of the Special Investigation Activity in the fight against crime.

To make the Special Investigation Activity more efficient, some criminal law norms are of particular importance:

1) Reasonable risk [7, Art.40]. The provisions of this article are taken into account during the execution of special investigative measures, operative experiment, undercover investigation, etc.

2) Voluntary renunciation of committing a crime [7, Art.56]. The provisions of this norm are of particular importance for the formulation of departmental norms, which regulate the basis for taking persons into operational records, as well as the reasons for terminating the investigative follow-up.

3) Release from criminal liability in connection with active repentance [7, Art.57]. The provisions of this norm are of major importance for solving the following tasks:

Developing the bases for ordering, authorizing, conducting, extending, terminating and recording the investigation/ information processing of participants in criminal groups, organizations (formations);

Creating departmental training methodologies of citizens to collaborate with the authorities whose specialized subdivisions carry out special investigative activities (with the exceptions provided for) [9, Art.15, point (6)], or to contribute in another way which is not prohibited by law, to special investigative activities;

Documenting the criminal activity of members of criminal groups by using persons released from criminal liability due to active repentance or voluntary renunciation of the crime.

As the need to counter organized crime increases and the qualitative change in the forms of its manifestation increases, the problem of improving the professional skills of investigation officers within the authorities whose specialized subdivisions perform special investigative activity, becomes more and more apparent, especially in questions related to the operational penetration into the criminal environment through the long-term infiltration of undercover investigators or persons trained in carrying out a specific special investigative measure. Today these measures are not popular and do not result in effective results due to insufficient legal and criminal defense of infiltrated persons.

The confidential activity of persons who carry out special missions of the authorities specialized in performing of special investigative activity, is constantly linked to the risk of forced participation in the commission of criminally prejudicial acts, in connection with which they require legal defense. The author C.V. Surcov, originally characterized the peculiar event, the need for legal and criminal defense of these categories of subjects

of operational investigative activity is based on the fact that these people are forced to balance between "permitted tricks and prohibited deception" [2, p.68].

According to the provisions of Law No.59/2012 of the Republic of Moldova on Special Investigative Activity: "*the investigation officer is the authorized person who, on behalf of the state and within the limits of his competence, carries out special investigative activity in accordance with the provisions of this law*" [9, Art.9, point (1)], resorting, as the case may be, to the help of natural and legal persons [9, Art.7, point (1), letter b)] and of specialists [9, Art.7, point (1), letter f); Art.36^2, point (2)] from different fields of knowledge, as well as of citizens who collaborate voluntarily [9, Art.15], confidentially [9, Art.12, para.(1), letter b)], with the specialized subdivisions.

The tasks performed by confidential employees often enter into contradiction with the principle of legality, in other words, the need to act strictly within the limits of the law. In some states, the legislator regulates this legal institute, establishing exceptions to the principle of legality, in other states, the general circumstances are directly provided for in the criminal law, the presence of which releases the person from criminal liability [4, p.21-25].

The legislation of the Republic of Moldova contains several symbolic and declarative legal norms for the protection of persons who provide assistance to the authorities whose specialized subdivisions carry out special investigative activity. Thus, Article 15 of the Law on special investigative activity is entitled, as follows: "Confidential employees". According to paragraph (5) of the same article: "*In order to ensure the security of confidential employees, their family members and relatives, special investigative measures are allowed to be carried out for their protection in the manner established by law*". In para.(1), point 1), letter b) of Art.19 [9] as basis for ordering special investigative measures serves the substantial evidence: "*regarding endangering the security of the investigating officer, undercover investigator, confidential employee or their family members, witnesses and other participants in the criminal process*". Also in this context, the regulation provided for in para.(3) of Art.39 is presented, namely: "*The activity of confidential employees is under the control of the Prosecutor General or a special prosecutor empowered by order of the Prosecutor General*". These are the only legislative provisions that to some extent describe the problem under investigation. Unfortunately, the current situation in this area is not quite good, compared to the legislation of other states.

Thus, the Czech Criminal Code contains the following legal norm: "A police officer who performs the duties of an agent under the provisions of special laws and who participates in the activity of an organized criminal group or supports this gathering of persons cannot be held criminally liable for participating in the criminal organization, if he commits this act with the aim of detecting the criminal who committed a crime within this association". Simultaneously, the limits of the confidential employee's behavior while performing his/her duties are regulated by the Police Law: "The police officer, who performs his duties as an agent, is obliged to follow the instructions of the hierarchically superior body, as provided for by this law. He must not perform other duties. In his activity he must choose those measures that are useful for the fulfillment the duties, and that do not harm the rights of other persons" [5].

The issue of the admissibility of illegal actions of a confidential employee, in connection with his use in performing reconnaissance tasks in the criminal environment, is rationally resolved in the legislation of Ukraine. Here the confidential employee is ab-

solved of liability for the unlawful acts he committed in the crisis situation, if they were necessary for the performance of his duties" [6, p.359].

In the Law regarding the Operational Investigative Activity, the legislator of the Russian Federation [13], in our opinion, made an attempt to regulate this important question. In para.(4), Article 16 of the aforementioned Law, it is stipulated that, during the defense of the life and health of persons, their constitutional rights and interests, as well as to ensure the security of society and the state from criminal attacks, it is permitted to forcibly prejudice social relations protected by law, committed by a person holding a responsible position, who carries out operational (special) investigative activity, or a person who assists them, acts committed under the conditions of the legal fulfillment by these persons of their official and public duties. As we have observed, the legislator equally ensures legal protection both to the person with responsible positions within the authority with competences in the field of special investigative activity, and to the persons who provide the latter with confidential assistance.

In order to improve the existing situation, we propose to supplement Art.15 of the Law on special investigation activity with a new paragraph – (5^1) with the following content: "Within the process of defending the life and health of individuals, their constitutional rights and freedoms, as well as in order to ensure the security of society and the state from criminal attacks, it is permitted to forcibly prejudice social relations protected by legislation, committed by confidential employees, acts committed under the legal conditions of fulfilling official duties or achieving socially useful goals, if it was not possible to achieve the pursued goals in any other way".

All decisions within the framework of criminal prosecution are based on the provisions of the Criminal Code and Criminal Procedural Code, but are not based on the Law on special investigative activity. Due to these facts, it is rational to supplement Article 15 of the Law on special investigation activity with paragraph (9): "Confidential employees, trained to carry out special investigative activities, through a written or verbal agreement, who carry out special tasks within criminal groups and associations, are exempt from criminal liability according to the legislation in force".

In addition, we propose to stimulate the activity with confidential employees by adopting the following legal norm. New paragraph (9) of Art.15 of the Law on special investigative activity: "confidential employees trained in carrying out special investigative activities, and who carry out special missions for the prevention and investigation/research of crimes, the detection of persons and the circumstances of the commission of crimes and who personally committed a crime without serious damage, but compensated for the damage caused, may be exempted from criminal sanctions in accordance with the legislation in force".

Nor can Art. 57 of the Criminal Code be considered applicable for the legal defense of persons who perform tasks of the authorities whose specialized subdivisions carry out special investigative activities and infiltrate criminal organizations. According to this article "A *person who has committed a minor or less serious crime for the first time may be released from criminal liability if, after the crime has been committed, he/she voluntarily denounced himself/herself, actively contributed to its discovery, compensated for the value of the material damage caused or, in some other way, repaired the prejudice caused by the crime*" [7, para.(1)]. Practice and reality show us that confidential employees, infiltrated into criminal groups, in most cases in the past have been convicted multiple times.

In addition, as a rule, members of organized criminal groups commit serious and particularly serious crimes, for which reason the confidential employee may have a connection to the latest. This is the real life.

At the same time, Art.40 of the Criminal Code provides for one of the causes that removes the criminal nature of the act – the well-founded risk: "*The act, provided for by criminal law, which caused damage to interests protected by law in the event of a justified risk for the achievement of socially useful goals does not constitute a crime*" [7, para.(1)]. The risk is considered justified if the socially useful purpose pursued could not be achieved without a certain risk and if the person who admitted it took the necessary measures to prevent causing damage to interests protected by law [7, para.(2)].

Taking into account the above, we propose adding a new Article 40^2 to the Criminal Code with the following content: "An act, provided for by criminal law, which has not seriously prejudiced social relations protected by criminal law, committed justifiably by an undercover investigator for the purpose of fulfilling special tasks of defending the rights and legitimate interests of citizens, society and the state from serious, particularly serious and exceptionally serious crimes, for the documentation of which special investigative measures are carried out, does not constitute a crime". The existence of this legal norm in the Criminal Code of the Republic of Moldova will establish a real mechanism for legal protection of persons who perform confidential tasks of the authorities whose specialized subdivisions carry out special investigative activity, as well as will expand the possibilities of engaging members of criminal organizations and groups in confidential collaboration based on information materials.

The notion of undercover investigator is reflected in the Criminal Procedure Code: "undercover investigator – official person who confidentially carries out special investigative activity, as well as another person who confidentially collaborates with criminal prosecution bodies" [8, point 20), Art.6].

In addition to all this, the norms from the Special Part of the Criminal Code are of particular importance for the special investigation activity, the elucidation, investigation/documentation, counteraction, and prevention of which are the tasks of the special investigation activity.

A particular problem of combating crimes at present consists in the mass and uncontrolled use by the security services of commercial structures of special technical means, predestined for the secret obtaining of information, meaning "de facto" that they carry out special investigative measures, the prerogative of carrying out which is exclusively of the authorities whose specialized subdivisions carry out special investigative activity [9, Art.6, para.(2)].

If the authorities whose specialized subdivisions perform these measures in accordance with the legislation [8, Art.134; 9, Art.27], including on the basis of the authorizations of the investigating judge, prosecutor, head of the specialized subdivision, then commercial structures armed with the latest technology illegally acquire confidential information not only about the company's employees, its competitors, violating the constitutional rights and freedoms of individuals, but also apply these special technical means to the employees and service premises of law enforcement bodies. At the same time, it is "prohibited to use special technical means to secretly obtain information by natural or legal persons not authorized in this regard by law" [9, point 9), Art.27].

In jurisprudence, it is unanimously recognized that criminal procedural legislation

constitutes an important element in ensuring the legal and organizational basis of the special investigation activity. The problems of correlation between criminal procedural norms and special investigative norms have been researched in the works of the following scholars: V. Cuşnir, B. Glavan, A. Pungă, M. Gherman, Al. Cicala, D.I. Bedneacov, B.T. Bezlepchin, V.I. Zajiţchi, D.B. Grebelischi, E.A. Dolea, V.A. Lucaşov, M.P. Poleacov, A.P. Rîjacov, V.G. Samoilov, C.V. Surcov, A.A. Ciuvilev, M.A. Şmatov, A.Iu. Şumilov.

Thus, V.G. Samoilov, back in the 1980s, wrote about the need to improve criminal procedural legislation in order to ensure maximum results in the area of special investigation activity. In addition to the requirements of the Criminal Procedure Code on the detection, with the help of the special investigation activity, of crimes signs and of the persons who committed them. The author proposed to supplement the Criminal Procedure Code with provisions on the obligation of the criminal investigation body to take actions in order to detect factual data, which contribute to the investigation of the object of the evidence and the establishment of the objective truth, in other words, the solution of the tasks of criminal justice. The scholar considered that this norm will correctly orient investigation officers towards the effective implementation of special investigative measures, aimed at collecting the information necessary for crime prevention and ensuring public order, and criminal prosecution officers – to make maximum use of the results of the operative investigative activity [10, p.9-11].

The aforementioned scholars emphasize that there is an indispensable connection between the special investigation activity and the criminal procedure activity, which is expressed through the following features:

1) Solidary character (elucidation, suppression, prevention and discovery of crimes);

2) Direct provision in the criminal procedural legislation of the obligation of criminal prosecution bodies to undertake the special investigative measures necessary for the purpose of detecting crimes, the persons who committed them, as well as for the purpose of crimes' preventing and suppressing;

3) Orientation of special investigative measures towards informational provision of the criminal process, carried out by specialized subdivisions, criminal investigation bodies and courts;

4) Procedural-criminal nature of the grounds for carrying out special investigative measures;

5) Establishment in the special investigation legislation of the order for the use of the results of the special investigation activity for the preparation and implementation of criminal and judicial prosecution actions;

6) Legislative provisions on judicial control over the respect for the rights and freedoms of individuals during the implementation of special investigative measures.

Unlike special investigative activity, criminal procedural activity regulates the activity of a limited group of officials and bodies (courts, prosecutors, criminal investigation officers, specialized subdivisions), the relations between them and the participants in the criminal process, with persons within the framework of criminal prosecution and the resolution of cases in court. At the same time, these related activities have interchangeable links with each other on a number of positions. Many aspects of this problem, especially questions related to the interdependence of special investigative and criminal procedural activities, are touched upon in a number of scientific works from different points of view [11].

Conclusion. Considering that crime, as a product of people's social behavior, constitutes a perpetual category of any human society, this phenomenon will undoubtedly be present in all contemporary socio-economic formations in the future. The state and society will constantly feel the need to use special investigative activity in the interest of defending citizens, society and the state from criminal attacks. Studying the specialized literature and systematizing the practice of applying the national legislation and of other states regarding the special investigation activity, allow us to conclude that improving the legislation and its application practice, represents one of the most important problems of both criminal science and criminal procedure.

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PREPARATION FOR THE INTERROGATION OF THE SPECIAL STATUS PUBLIC OFFICIAL AS A SUSPECT OR ACCUSED IN CORRUPTION OFFENSES AS A MANDATORY STEP FOR ENSURING TACTICAL SUCCESS

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Summary

This article addresses, from an advanced scientific perspective, the tactical preparation phase of the interrogation of a person suspected or accused in investigations concerning corruption offenses committed by public officials with special status. The author emphasizes that the specific characteristics of these individuals – who possess advanced legal training and significant professional experience – require the use of specialized preliminary analysis methods based on interdisciplinary and psychological approaches. Three fundamental strategic components are analyzed: in-depth study of the criminal case materials, detailed evaluation of the investigated subject's personality, and the optimal selection of the time and place for the interrogation. Through scientific debate and well-argued personal viewpoints, the author formulates concrete recommendations for optimizing interrogation tactics and increasing the evidentiary efficiency of criminal investigations in such complex cases.

Keywords: tactical interrogation, special status public officials, corruption, interrogation preparation, forensic tactics, forensic psychology, investigative methods, evidentiary efficiency.

Introduction. The preparation of the interrogation of a person suspected or accused in criminal investigations concerning corruption offenses – especially when they involve public officials with special status – represents a key factor that decisively influences the tactical outcome of the entire criminal investigation. This importance is primarily determined by the specific nature of the offenses under investigation and, more significantly, by the characteristics of the individuals involved, who typically possess a high level of legal knowledge and procedural expertise, offering them considerable advantages over the investigative authorities.

The phase preceding the interrogation, according to doctrinal conceptions both at national and international levels, goes beyond the simple review of existing procedural documents. It involves a comprehensive and complex inquiry that provides the investigative body and the prosecutor with the necessary foundation to develop a well-grounded tactical strategy tailored to the specific context of the case. Some authors [1, p.136; 2] emphasize the importance of conducting a thorough psychological and behavioral assessment of the investigated person from the preliminary stage in order to anticipate and effectively counter defensive behaviors, which are often highly structured and deliber-

ately orchestrated by individuals involved in corruption offenses.

It is a well-established fact that persons involved in corruption offenses – particularly public officials – tend to exhibit heightened psychological resistance due to their professional experience and advanced capacity for self-control and emotional manipulation. For example, Rebecca Milne and Ray Bull underline that such individuals are capable of anticipating the direction of questions posed by the criminal investigation officer or the prosecutor, and of promptly adjusting both their responses and their defensive conduct in ways that are difficult to counter without solid tactical and psychological preparation on the part of the investigative authorities [3, p.80–86].

In the same context, Russian author Asleam Halikov highlights that the major tactical challenge in interrogating public officials with special status lies in their ability to anticipate and tactically counteract investigative approaches, a skill rooted in their deep familiarity with judicial procedures and investigative techniques [4, p.163]. From the perspective of the present study's author, the tactical success of the interrogation in complex corruption cases fundamentally depends on the ability of the investigative officer or prosecutor to conduct, already at the preparation stage, a precise and integrated behavioral profiling of the subject under investigation [4, p.163-164]. In this regard, it is considered that the preliminary stage should also include a detailed analysis of the professional and personal background of the investigated subject, complemented by additional operational information, to more accurately anticipate the individual's reactions to various tactical scenarios proposed during the interrogation.

Therefore, in-depth tactical preparation based on a multidisciplinary and psychological analysis of the investigated person is not only a guarantee of tactical success during the interrogation but also an essential condition for enhancing evidentiary quality and the overall effectiveness of the criminal investigation in corruption cases involving public officials with special status.

Discussions and results obtained. A first indispensable component in the preparation process is the in-depth study of the criminal case materials. The effective investigation of corruption offenses, particularly when public officials with special status are involved, requires a meticulous and systematic analysis of all existing evidence and information within the criminal case. Without detailed and thorough knowledge of the case file's contents, the criminal investigation officer or prosecutor risks formulating ineffective questions or adopting strategies that are not adapted to the realities and specific traits of the investigated individuals, which may lead to major tactical failure [5, p.15].

Thus, Moldovan authors Mihail Avram, Vasile Gurin, and Anatol Donciu state that the success of the interrogation largely depends on the investigative officer's ability to strategically utilize previously obtained information, noting that the investigator who studies in advance the material details and circumstances of the case has the advantage of anticipating possible contradictions and defensive barriers, which allows for the formulation of coherent and tactically effective questions [1, p.135].

In Russian literature, Roman Chiupakhin critically emphasizes that superficiality or negligence in the preliminary analysis of case materials can generate extremely unfavorable tactical consequences. According to him, the investigator risks falling into a psychological trap, as "the investigated subjects, taking advantage of their high level of legal training and tactical experience, may seize the initiative and control of the interrogation process" [6, p.96-97].

On the other hand, Elena Frolova highlights the need to expand the analysis beyond the formal materials of the criminal case, recommending that the investigator also pay attention to additional operational information regarding the personal and professional relationships of the investigated subject. The author emphasizes that, in the context of corruption offenses, "the professional relationships of the investigated individual are often key to identifying critical elements of the offense and may constitute a major tactical advantage during the interrogation" [7, p.159-160].

In international scientific debate, Rebecca Milne and Ray Bull have stressed the essential importance of this stage, strongly recommending that the investigator apply the PEACE model (Planning, Engagement, Account, Closure, Evaluation), particularly the planning phase. According to them, "without detailed and comprehensive preparation of the evidentiary material, the investigative officer risks formulating inappropriate or ineffective questions, thus allowing the subject to adopt efficient defensive behaviors" [3, p.80-86].

Additionally, researchers Ronald Fisher and Edward Geiselman discuss the "cognitive interview" method, stating that the effective use of this technique fundamentally depends on the investigator's ability to master the case details and the context of the investigated facts. They note that "a well-prepared investigator can direct the interviewee's attention to contextual and sensory details, thereby reducing the effectiveness of defensive strategies based on pre-prepared statements" [8].

From the perspective of Russian authors, Asleam Halikov emphasizes even more strongly the importance of tactical preparation, remarking that "insufficient or superficial preliminary analysis in corruption cases involving public officials with special status facilitates the adoption of stable and effective defensive positions by the investigated person, thereby significantly compromising the efficiency of the entire investigative activity" [6, p.99-102].

In our opinion, to overcome these difficulties and enhance tactical success, it would be necessary to introduce mandatory methodological guidelines that include clear and explicit procedures regarding the preliminary analysis of all available information, including evidentiary materials, operational data, professional and personal relationships, financial aspects, and the previous behavioral history of the investigated individuals. In this regard, we propose that the mandatory standard for interrogation preparation should also include consultation of external databases, financial and relational history, as well as the obligatory conduct of preliminary behavioral and psychological analyses.

Thus, the preparatory stage of interrogating suspects and accused persons involved in corruption offenses is decisive. An integrated and multidimensional approach – encompassing procedural, tactical, operational, and psychological elements – represents the guarantee of a solid, transparent, and convincing investigative process. This approach contributes decisively not only to the tactical success of the interrogation but also to the enhancement of the overall quality and credibility of the judicial system.

The second essential strategic component is the detailed analysis of the personality of the suspect or accused. This stage gains particular significance when investigations target corruption cases involving public officials with special status, as they possess advanced legal training and professional experience, which enables them to effectively anticipate and counter investigative tactics. Thus, general and procedural knowledge alone is no longer sufficient; a profound and multidimensional evaluation of the subject's personality is required [9, p.160-161], enabling the accurate anticipation of defensive behavior and the appropriate adjustment of interrogation tactics.

In Russian literature, Asleam Halikov highlights the importance of thorough analysis, noting that in the case of public officials, "they possess advanced knowledge of investigative methods and tactics and can anticipate the investigator's actions, crafting well-considered defensive responses" [4, p.99]. We fully agree with this view but believe that the analysis should also extend to identifying the emotional and cognitive vulnerabilities of the interviewee, as these may help overcome preconstructed defensive strategies.

American authors John E. Reid, Fred E. Inbau, and others share this perspective, stating that the tactical success of the interrogation "critically depends on adapting the interrogation strategy to the psychological profile and personality of the person under investigation" [10, p.210]. This idea is further reinforced by the research of Bianca Baker-Eck, who argues that effective interrogation always involves tactical adaptation based on a deep understanding of the emotional and behavioral profile of the investigated individual, since "the defensive strategies adopted by investigated subjects vary significantly depending on temperament, professional experience, and their level of emotional self-control" [11].

In the same context, Gary Wells and Elizabeth Loftus recommend the anticipatory evaluation of the potential reactions of the subject based on their behavioral and professional history. They state that "a thorough understanding of the psychological traits and professional background of the individual under investigation enables the investigator to promptly identify the defensive strategy and formulate tactical questions that lead to the revelation of the truth" [12, p.617-629].

We largely agree with the opinions expressed by these authors; however, we add that a simple retrospective psychological analysis of the subject's history is not sufficient. In our view, personality analysis should also include in-depth psychometric and behavioral assessments, conducted in collaboration with specialized psychologists, so that the criminal investigation officer or prosecutor can adapt interrogation tactics flexibly and precisely, according to the subject's reactions.

Author Stavroula Soukara contributes to the scientific debate by stating that the analysis of the investigated person's personality should include "an assessment of previously exhibited verbal and non-verbal behaviors, to detect potential indicators of truthfulness or deception in statements" [13, p.905, pp.901-920].

Romanian forensic expert Emilian Stancu believes that a detailed analysis of the personality of the investigated individual must also take into account the social and financial context, emphasizing that "financial and relational elements often play a decisive role in the commission of corruption offenses, and knowledge of these details can provide the criminal investigation officer with a significant tactical advantage in formulating interrogation questions" [14, p.350-352].

In line with the views of the aforementioned authors, we believe that a comprehensive and multidimensional analysis of the investigated person's personality should become a standardized and mandatory practice. In this regard, we propose the establishment of clear protocols and unified methodologies that mandate the evaluation of psychological traits (including psychometric testing), behavioral history, social and financial status, as well as the analysis of relevant personal and professional relationships prior to the actual interrogation.

Therefore, a multidisciplinary and detailed approach to the personality of the suspect or accused represents not only a guarantee of tactical success in the interrogation process, but also a fundamental condition for a fair and accurate judicial process. In our opinion, this approach would decisively contribute to preventing judicial errors, reducing

the risks associated with false testimonies or strategic manipulation, and strengthening public confidence in the justice system.

The third essential strategic component for the tactical success of interrogating a suspect or accused in corruption cases involving public officials with special status lies in the optimal selection of the time and location of the interrogation. This stage requires a complex and nuanced approach involving the thorough assessment of psychological and contextual conditions that may significantly influence the behavior of the subject, their willingness to cooperate sincerely, and their actual readiness to provide truthful information.

Forensic literature unanimously emphasizes that choosing an appropriate interrogation setting plays a decisive role in the tactical and psychological success of this investigative activity. Especially in cases involving corruption offenses committed by public officials, the neutral and controlled nature of the interrogation environment becomes a fundamental tactical necessity. Russian author Asleam Halikov firmly states that the interrogation should not take place within the investigated person's usual professional setting, such as their own office or similar environments, arguing that "the professional environment of the investigated person provides them with a considerable psychological advantage, reinforces their sense of safety and control, and can thus significantly diminish the effectiveness of tactical questioning and the investigator's ability to obtain truthful and relevant answers" [4, p.99-100].

Western authors share this view, emphasizing the importance of the neutrality of both the location and timing of the interrogation. John E. Reid and Fred E. Inbau stress that "selecting a neutral space, free of emotionally favorable stimuli for the subject, significantly reduces their ability to manipulate and emotionally control the situation, thus facilitating the elicitation of sincere and truthful responses" [10, p.205].

On the other hand, British investigative psychology literature, through the research of Ray Bull and Rebecca Milne, also emphasizes the strategic selection of the interrogation timing. According to the authors, the optimal moment for the interrogation should be chosen only after the investigator has already gathered sufficient indirect information and tangible evidence, since "the gradual presentation of evidence at a strategically chosen moment can generate a psychological state of inevitability regarding the proof of guilt, thereby reducing defensive resistance and increasing the subject's willingness to genuinely cooperate" [3, p.85].

From the perspective of Romanian forensic psychology, Tudorel Butoi argues that the interrogation space must be arranged in such a way as to minimize stress factors and create an atmosphere conducive to cooperation. He states that "when the investigated subject feels psychologically comfortable, yet not in a familiar environment that provides excessive security, they become much more receptive and more inclined toward authentic and sincere collaboration" [2].

The international scientific debate adds complexity to this topic, with contributions from researchers warning that conducting an interrogation at an inappropriate time, such as immediately after the subject's detention without substantial evidence, may lead to the adoption of an extreme defensive attitude, including a complete refusal to cooperate or even unintentional false testimony [15]. In this context, we agree with the authors' position but believe that a more flexible assessment of the interrogation's timing should be made based on the specific characteristics of the case, taking into account the personal and contextual particularities of the investigated individual.

In our opinion, the optimal selection of the location and timing of the interrogation must be explicitly regulated and integrated into the mandatory procedural framework of criminal investigation bodies. Criminal investigation officers and prosecutors should regularly benefit from specialized training in advanced behavioral and psychological analysis techniques. We propose the establishment of standardized and clear protocols regarding the selection of the place and time of interrogation in complex corruption cases, which should explicitly recommend conducting interrogations in specially arranged spaces – psychologically neutral and tactically controlled – as well as organizing the interrogation at a strategically well-chosen moment, after solid and clear evidence has been accumulated.

Therefore, the strategic and psychologically grounded selection of the location and timing of the interrogation is indispensable for the tactical success and evidentiary effectiveness of investigations into corruption offenses committed by public officials with special status. This approach, combined with the continuous training of criminal investigation officers and prosecutors and the implementation of clear procedures, can decisively contribute to increasing the effectiveness of the interrogation while ensuring procedural fairness and the full respect of the investigated person's rights.

Conclusions. Based on the conducted analysis, the following main conclusions can be formulated:

Thorough and multidimensional preparation of the interrogation is indispensable for the effectiveness of investigative tactics in corruption cases involving public officials with special status. A detailed and systematic study of the case materials, combined with behavioral, psychological, and operational analysis of the investigated person, allows for the anticipation and neutralization of sophisticated defensive strategies typical of individuals with advanced legal training. In this regard, we recommend the introduction of mandatory protocols to standardize the tactical preparation phase of the interrogation, including direct collaboration with specialized forensic psychologists.

The strategic selection of the time and place of the interrogation decisively influences its tactical and evidentiary success. Choosing a psychologically neutral and controlled environment at an appropriate time – after the prior accumulation of a sufficient amount of indirect data and evidence – constitutes a fundamental condition for reducing the psychological resistance of the subject and obtaining truthful and relevant statements. In this context, we support the explicit and mandatory regulation of these aspects in internal criminal procedure rules and the continuous training of investigators in modern communication techniques and advanced investigative tactics.

We consider it necessary to develop and implement clear and mandatory methodological protocols that provide for the in-depth and multidimensional analysis of the personality of the investigated individual prior to interrogation, including psychometric and behavioral assessments conducted in collaboration with specialized psychologists. In our view, this interdisciplinary approach would significantly contribute to preventing judicial errors, reducing the risks of false statements, and strengthening the credibility of the entire judicial process in the investigation of complex corruption offenses committed by public officials with special status.

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MODELS OF LEGAL ENTITIES REPRESENTATION IN CRIMINAL PROCEEDINGS: COMPARATIVE APPROACHES

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Summary

The article examines models of legal entity representation in criminal proceedings, providing a comparative perspective on the existing regulations in the Republic of Moldova and other legal systems. The evolution of legislation in this field has been influenced by the necessity of ensuring a fair trial for legal entities, which, unlike natural persons, cannot act directly within judicial proceedings. The identification and appointment of a legal representative for a legal entity is a crucial aspect in guaranteeing the right to defense and other procedural safeguards.

The study highlights the current shortcomings of Moldovan legislation regarding the designation of the legal representative, their responsibilities, and the compatibility of domestic regulations with international standards. In particular, it addresses the challenges that arise when both the legal entity and its representative are involved in the same criminal procedure, potentially creating conflicts of interest and procedural gaps. Also, the article analyzes solutions implemented in various countries to improve the representation mechanism of legal entities. Based on these observations, it proposes legislative adjustments aimed at enhancing the efficiency of criminal proceedings and strengthening the protection of legal entities' rights.

Keywords: legal entity, legal representation, criminal proceedings, right to defense, comparative legislation, procedural safeguards, international regulations, conflict of interest, procedural norm, legal reform.

Introduction. The representation of legal entities in criminal proceedings is a key element in ensuring a fair trial and safeguarding the right to defense. Unlike natural persons, legal entities cannot act directly within judicial procedures, making the appointment of a representative an imperative condition for effective participation in the proceedings. In the context of recognizing the criminal liability of legal persons, modern legal systems have introduced specific mechanisms for appointing legal representatives.

This necessity derives from several considerations. The first is the lack of physical capacity to act – legal entities are abstract constructs and cannot appear before the court or respond directly within criminal proceedings. Another fundamental reason is the assurance of an effective defense, since the right to defense is a core principle of criminal law, it must be guaranteed for legal entities as well, through the appointment of a representative to act on their behalf. Additionally, the avoidance of procedural deadlocks must be considered – lack of clear representation can lead to delays, the nullity of certain procedural acts, and a breach of the principle of the swiftness of justice.

The right to defense is a fundamental element of criminal proceedings, and the absence of a clear legal framework for representing legal entities can create procedural imbalances. The main implications include: clarifying the procedural status of legal entities

– legislation must specify who may be appointed as a representative and under what conditions, to avoid divergent interpretations and legal uncertainty; and addressing conflicts of interest – in many cases, the legal representative of a legal entity may also be under criminal investigation, which can affect the impartiality and effectiveness of the defense. This situation necessitates alternative mechanisms for appointing an objective representative, as well as alignment with international standards. Comparative law offers various models of representation, from the appointment of an administrator or director to court, or prosecutor imposed representation. Implementing a clear and effective system of representation helps ensure the compatibility of national legislation with international legal norms.

Methods and materials applied. To analyze the models of legal entity representation in criminal proceedings and to identify potential legislative solutions, the research presented in this article is based on several scientific methods. These methods are complementary and allow for a systematic and comparative approach to the subject.

The *comparative method* is essential for analyzing the differences and similarities between legal systems with regard to the representation of legal entities in criminal trials. By examining the regulations in the Republic of Moldova and in other countries (e.g., France, Germany, the United States, and Romania), we can identify best practices and effective legislative solutions. The aim is to evaluate how different states regulate the representation of legal entities and to determine the feasibility of applying such solutions within the Republic of Moldova. The expected outcome is to propose legislative adjustments inspired by international models, aimed at improving the national legal framework.

The *legal analysis method* involves an in-depth examination of national legislation, relevant case law, and legal doctrine in the field. The provisions of the Criminal Procedure Code of the Republic of Moldova relating to the representation of legal entities are analyzed and assessed in terms of their compatibility with international standards. The goal is to identify legislative gaps and practical challenges that may arise in the application of the current normative framework. The expected results include well-reasoned arguments in favor of necessary legislative amendments.

The *case study method* is used to highlight the practical issues faced by the Moldovan legal system in matters concerning the representation of legal entities. Concrete cases from national and international jurisprudence are analyzed.

Materials used in the preparation of this study include a variety of sources, including national and international legislation: the Criminal Procedure Code of the Republic of Moldova, with a focus on articles concerning legal entity representation; international conventions and treaties on the criminal liability of legal entities (e.g., the UN Convention against Corruption, EU regulations on combating corporate crime); and the criminal procedure codes of other countries (France, Germany, the USA, and Romania) for comparative analysis of representative models.

Discussions and results obtained. According to the Criminal Procedure Code of the Republic of Moldova, the representation of legal entities in criminal proceedings is regulated through various provisions that define procedural capacity, the consequences of incapacity or limited capacity, as well as the rights and duties of legal representatives of different parties in the criminal process, including the victim, injured party, civil party, suspect, accused, and defendant. Furthermore, the Code specifies the rights and obligations of the legal representative of the victim, injured party, civil party, suspect, accused, defendant, as well as those of the representatives of the victim, injured party, civil party,

and the party held civilly liable. The Moldovan Criminal Procedure Code places special emphasis on protecting the rights of all parties involved and establishes a detailed framework for representation in criminal proceedings [1].

National legislation provides in Article 521 of the Criminal Procedure Code that "in cases where criminal prosecution or trial is initiated against a legal entity for the same offense or for connected offenses also involving its legal representative, the legal entity shall appoint, within five days from the date of being informed of the order recognizing it as a suspect, or within 48 hours from the time of being informed of the indictment order, another representative who is not subject to criminal proceedings. If the legal entity fails to appoint a representative, upon the request of the prosecutor, the investigating judge or, as the case may be, the trial court shall appoint a representative for the legal entity from among the individuals managing the entity who are not subject to criminal proceedings".

What happens if the legal entity, for various objective or subjective reasons, does not appoint another representative? In such cases, the criminal procedural law clearly outlines how to proceed. Thus, according to Article 521 paragraph (2^1) of the CPC, "if the legal entity fails to appoint a representative as per paragraph (2), upon the request of the prosecutor, the investigating judge or, as the case may be, the trial court shall appoint a representative of the legal entity from among the individuals managing the entity who are not subject to criminal proceedings".

In other words, the law requires that a legal entity must be mandatorily represented. Under the cited provision, the investigating judge appoints the individual who will represent the legal entity, specifically someone from within the entity who holds management authority. Therefore, the legal representative of the entity may be: one of the managing partners or the director (in general partnerships); one of the general partners or the director (in limited partnerships); or a board member, director, or administrator (in limited liability companies), depending on who is under criminal investigation in the case involving the legal entity [2].

Situations may arise where the legal entity has not appointed a representative, and the investigating judge is unable to designate another, for example, due to the absence of eligible candidates. In such cases, proceedings follow Article 521 paragraph (2^2) CPC, which states: "in the absence of individuals managing the legal entity, the prosecutor or the court shall request the territorial coordinator of the National Council for State-Guaranteed Legal Aid to appoint a lawyer to provide state-guaranteed legal assistance. In such cases, the provisions of paragraph (3) apply accordingly, unless circumstances arise that justify the replacement of the lawyer".

Through these legal provisions, the criminal procedure legislation ensures the right of legal entities to defense. The fundamental duty of the legal representative or the court-appointed one is to act on behalf of the legal entity and exercise, through their authority, all rights afforded to that entity. In other words, the legal representative benefits from all rights provided under Article 78 CPC, as a proxy for the accused. However, the national legislation does not expressly provide a separate article in the Criminal Procedure Code detailing the rights and duties of the legal representative of a legal entity.

Within the criminal process, the legal or appointed representative of a legal entity is empowered to act on its behalf in all procedural actions, including those where the legal entity is a party (according to Article 521 paragraph (3) CPC). It is important to note that the representative of the legal entity does not act in the capacity of a lawyer in the

criminal process, but rather performs specific duties related to the representation of the entity. At the same time, the legal entity has the right to appoint a lawyer to safeguard its interests. In the absence of legal restrictions, the entity's lawyer may also provide legal assistance to its employees involved in the case.

In criminal proceedings, the representation of legal entities varies significantly across national legal systems. Analyzing the approaches adopted in France, Germany, the United States of America, and Romania reveals distinct models regarding the appointment and role of legal entity representatives.

In the French legal system, when a legal entity is involved in a criminal trial, it is generally represented by its legal representative. However, when this representative is also subject to criminal prosecution for the same or related acts, a conflict of interest may arise, which could compromise the entity's effective defense. To prevent such situations and ensure impartial representation, the court has the authority to appoint an *ad hoc administrator*. The ad hoc administrator is an independent person appointed by the court to temporarily assume the duties of the legal representative in defending the interests of the legal entity throughout the criminal proceedings. This measure is essential to guarantee that the legal entity benefits from proper representation and that the trial unfolds in accordance with the principles of fairness and justice.

Although this practice is recognized and applied in French case law, identifying a specific article in the French Criminal Procedure Code regulating the appointment of an ad hoc administrator is difficult, as relevant provisions may be dispersed across various sections of the code or established through judicial interpretation.

In the German legal system, legal persons are not directly subject to criminal liability. Instead, German legislation provides for administrative sanctions against legal entities for unlawful acts committed in the course of their activities. Thus, although legal entities cannot be held criminally liable in the strict sense, they may be subject to administrative penalties for legal violations committed by their representatives [3].

As for natural persons acting on behalf of legal entities, they may be held individually criminally liable for their actions. The German Criminal Code (*Strafgesetzbuch*) states that each participant in a criminal offense shall be punished according to their own guilt, regardless of the culpability of others [4].

Therefore, in Germany, although there is no direct criminal liability for legal entities, they may face administrative sanctions for illicit acts committed during their activity, while the individuals involved may be prosecuted and held criminally accountable on an individual bases.

In the legal system of the United States of America, legal entities involved in criminal proceedings are represented by retained attorneys who act in their name and interest. It is important to note that, according to the jurisprudence of the U.S. Supreme Court, the *Fifth Amendment of the Constitution*, which protects against self-incrimination, applies only to natural persons and not to corporations. Consequently, companies cannot refuse to provide documents or information during criminal investigations, even if such disclosures might be incriminating.

Regarding the court appointment of a special representative for a legal entity, this practice is not explicitly regulated in the Federal Rules of Criminal Procedure. Generally, courts rely on broad procedural principles and jurisprudence to address such situations. For example, when a company's management is involved in illegal activities or there is

a conflict of interest, the court may appoint a *monitor* or an independent *trustee* to supervise and ensure the entity's compliance with legal requirements. These appointments usually arise from *Deferred Prosecution Agreements* (DPAs) or other negotiated arrangements between the company and the authorities [3].

In Romania, the representation of legal entities in criminal proceedings is governed by the Criminal Procedure Code, which establishes the procedural rights and obligations of legal persons. According to Article 491 para.(2) of the Code, "if criminal action is initiated against the legal representative of the legal entity for the same or related acts, the legal entity must appoint a proxy. In the absence of such an appointment, the proxy is designated by the prosecutor or preliminary chamber judge or by the court from among licensed insolvency practitioners" [5].

This provision aims to prevent conflicts of interest that may arise when the legal representative of a company is simultaneously a defendant in the same case. By appointing a distinct proxy, the legal entity is ensured objective and effective representation in criminal proceedings.

In practice, the appointment of a proxy may raise various issues, particularly in cases where the legal entity fails to make an appointment, prompting the judicial authority to designate an insolvency practitioner. Judicial interpretations have emphasized the importance of upholding the right to defense and ensuring adequate representation of legal persons, even under complex circumstances.

Therefore, Romanian legislation and judicial practice seek to balance the need for proper legal entity representation with the imperative of preventing and managing conflicts of interest, contributing to the fairness of criminal proceedings and the protection of all parties' rights.

Conclusions. The representation of legal entities in criminal proceedings is a matter of utmost importance in the context of strengthening the rule of law and ensuring fair trial standards. International developments in this field demonstrate that the effective protection of the interests of legal entities involved in criminal trials requires a clear normative framework, one that is adapted to modern economic and institutional realities and supported by consistent jurisprudence capable of managing conflicts of interest and procedural vulnerabilities.

The comparative analysis of the regulations governing legal entity representation in France, Germany, United States, and Romania reveals legislative models and judicial practices that can serve as valuable inspiration for improving the criminal procedural legislation of the Republic of Moldova.

In France, although the Criminal Procedure Code does not expressly provide for the appointment of an ad hoc administrator, judicial practice has established this institution as an effective mechanism to avoid conflicts of interest arising when the legal representative of the entity is also a defendant in the same case. This solution, grounded in principles of procedural fairness and loyal representation, offers a flexible model adapted to concrete circumstances, ensuring effective legal defense for the entity.

In Germany, the approach is marked by dual responsibility of both the legal entity and the natural persons acting on its behalf. Although German law does not explicitly recognize criminal liability for legal entities, the normative framework allows for the imposition of severe administrative sanctions in cases where a company's leadership is involved in illicit conduct, while criminal prosecution of administrators is carried out separately

under the procedural code. This model highlights the importance of delineating responsibilities and ensures the efficiency of punitive mechanisms through complementary, yet coherent, instruments.

The American system offers a distinct vision, in which legal entities are represented by retained attorneys, and courts may appoint a "monitor" or special representative through negotiated judicial settlements (such as Deferred Prosecution Agreements), to safeguard public interests and ensure the entity's compliance with legal obligations. The jurisprudence of U.S. Supreme Court, which excludes corporations from the protection of the Fifth Amendment (concerning the right to remain silent), underscores the particularity of the American approach, wherein legal persons have extensive obligations to cooperate with prosecuting authorities. This model is valuable for its emphasis on prevention, transparency, and corporate accountability [6].

In Romania, the provisions of Article 491 paragraph (2) of the Criminal Procedure Code provide a clear legal basis for appointing a proxy when the legal representative is subject to criminal prosecution for the same or related offenses. If the legal entity fails to make such an appointment, a proxy is designated by the prosecutor, judge, or court from among licensed insolvency practitioners. This solution helps ensure a fair trial and avoid procedural deadlocks while protecting the autonomy of legal defense and the will of the legal person.

In comparison, the legislation of the Republic of Moldova regulated by the Criminal Procedure Code (Law No.122-XV of March 14, 2003), does not explicitly provide solutions for the scenario in which the legal representative of the entity is also involved in the same criminal case. The absence of a clear rule regulating the appointment of an alternate representative or ad hoc proxy poses evident risks of conflict of interest, weakens the legal defense of the entity, and threatens procedural balance. Moreover, the lack of a provision allowing the court or prosecutor to appoint an independent representative in cases of inaction by the legal entity represents a significant legislative gap.

In light of these findings, it is necessary to introduce a provision in the Criminal Procedure Code of the Republic of Moldova that explicitly addresses situations of conflict of interest in legal entity representation. In this regard, as a *lege ferenda* proposal, the following article is suggested:

Proposed Article – Representation of legal entities in case of conflict of interest:

If the legal representative of a legal entity is subject to criminal prosecution for the same offense or for related offenses as those for which the legal entity is being prosecuted, the entity shall appoint a distinct proxy to represent it in criminal proceedings.

If the legal entity fails to appoint a proxy within 10 days of notification, the prosecuting authority or court shall appoint a representative from among practicing attorneys or licensed insolvency practitioners.

The appointed representative shall have the same procedural rights and obligations as the legal representative of the entity, except for those that are strictly personal in nature.

The adoption of such a provision would bring the Republic of Moldova legal framework in line with European standards in criminal procedure, while strengthening legal certainty, the right to defense, and the quality of justice rendered in criminal cases involving legal entities.

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SEXUAL ASSAULT ON MINORS: REGULATION, PRACTICE AND ENFORCEMENT CHALLENGES AFTER THE 2023 REFORM

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Summary

This article analyzes the new regulations introduced by Law No.217/2023 on the criminal protection of minors against sexual assault, applicable starting from January 2024. The study aims to evaluate the legal impact of Article 219[1] of the Criminal Code, which establishes a distinct incrimination – sexual assault committed against a minor – and to identify the essential differences compared to the previous regulations [2, Art.219, 220]. The objective nature of the new consent limit (16 years), the introduction of specific aggravating factors and the establishment of a cause for non-punishment in the case of small age differences between the perpetrator and the victim are highlighted. The research approach is based on a doctrinal, jurisprudential and comparative analysis, which reveals both legislative progress and possible implementation difficulties. Finally, proposals for 'lege ferenda' are formulated to strengthen the protection of minors in accordance with European and international standards.

Keywords: sexual assault, minor, consent, age difference, child protection, sexual crimes, age of consent.

Introduction. The protection of minors against sexual crimes is a constant concern in legal doctrine and judicial practice, in a social context marked by the increase in the incidence of abuse cases. In Romania, the recent legislative amendments introduced by Law No.217/2023, applicable from 1 January 2024, aim to correct the previous gaps and ambiguities of the Criminal Code regarding sexual crimes committed against minors [3].

The topic is of particular importance both in terms of the social consequences of the phenomenon and the complex legal implications generated by the new regulations. The choice of this topic is motivated by the need to clarify the normative impact and critically evaluate the efficiency of the new legislation.

The main purpose of this research is to analyze in depth the new provisions regarding sexual assault on minors, with a focus on Article 219[1] introduced in the Criminal Code, and to evaluate how they contribute to strengthening the legal protection of minor victims. At the same time, it aims to highlight the essential differences from previous regulations, as well as the application difficulties that may arise in judicial practice. The relevance of the approach lies in the topicality of the topic, in relation to recent legislative

reforms and the need to align Romanian criminal law with international standards regarding child protection.

The paper focuses specifically on the crime of sexual assault committed against minors, as it is regulated in its current form. In this sense, the analysis will not include in detail related crimes such as rape [2, Art.218] or sexual corruption of minors [2, Art.221], except to the extent that they are relevant for understanding the new regulatory framework. The distinction between sexual assault and other forms of sexual abuse is necessary for a clear delimitation of the scope of applicability of the new criminalization and to avoid conceptual and legal confusion.

Online information, as well as visual information encountered in everyday life, increases the aggression that viewers display, without being able to offer the audience certain ways to counteract the sexual aggression that abounds in 21st century society in all countries of the world. The object of this scientific endeavor is the analysis of the main changes that occurred as a result of the Directives of the European Parliament, which are based on the Council of Europe Convention for the Protection of Children against Sexual Exploitation and Sexual Abuse [5] in accordance with the Charter of Fundamental Rights of the European Union and the United Nations Convention on the Rights of the Child, which resulted in the development of measures to prevent this phenomenon in the current context of social development [18]. The best interests of the child must be the basic element in the implementation of any measures to combat these types of crimes, with criminal legislation to be updated with new instruments to ensure a comprehensive legal framework, allowing the prevention and combating of this phenomenon and the protection of victims.

Methods and materials applied. The methodological approach of this study will be predominantly legal, based on the normative analysis of the new regulations in comparison with the previous legislation. Doctrinal research tools (analysis of legal concepts and opinions expressed in the specialized literature), jurisprudential analysis (with emphasis on relevant decisions of national and international courts) and comparative perspective (by reference to similar regulations from other European legal systems) will be used. This integrated approach will allow for a complex and rigorous understanding of the legal implications of the new regulations.

1.Regulatory framework before 2023. 1.1.Presentation of previous regulations: Art.220 CC – sexual act with a minor; *Art.219 – sexual assault*. In its form prior to the amendments brought by Law No.217/2023, the Romanian Criminal Code regulated sexual acts against minors in particular through two key articles: Art.220 and Art.219 [2]. Given the need to provide special protection to minors who may be victims of serious crimes, such as assault, abuse, sexual exploitation and child pornography, "a comprehensive approach is required that includes the prosecution of offenders, the protection of child victims, as well as the prevention of the phenomenon. The best interests of the child must constitute the basic element in the implementation of any measures to combat these crimes" [6, Art.6]. Thus, it was necessary to replace Framework Decision No.2004/68/JHA with a new instrument that would ensure a comprehensive legal framework, capable of leading to the reduction, prevention and cessation of crimes against sexual freedom and integrity committed against minors, which required the signatory states to modify the constitutive content, the age of sexual consent, respectively, the conditions for criminalizing deviant behavior, allowing this goal to be achieved [7]. From this, we deduce that the development

by all criminal legislation of legal norms that seek to protect the freedom and sexual integrity of minors represents one of the most valuable obligations aimed at guaranteeing the right to life and integrity of minors by the member states of the Council of Europe Convention.

Article 220 of the Criminal Code, entitled "*Sexual intercourse with a minor*", criminalized sexual intercourse with a minor under the age of 15, in two cases: (1) consensual, if the minor was between 13 and 15 years old, and (2) regardless of consent, if the minor was under the age of 13. The offense was punishable by relatively moderate penalties, depending on the age of the victim and the age of the perpetrator [2]. The consent of a minor between 13 and 15 years old was taken into account, but only under limited conditions, especially when the age difference between the parties was considerable or when there were authority relationships.

Article 219 of the Criminal Code, on "*Sexual assault*", criminalized any sexual acts committed by coercion, making it impossible to defend oneself or express one's will, or by taking advantage of such a state, but without the penetration characteristic of rape (which was regulated separately by Article 218). This crime applied to both minor and adult victims, without differentiated protection for vulnerable minors.

1.2.*Analysis of legislative limitations and gaps found in judicial practice*. The previous regulatory framework was often criticized for its ambiguity and lack of a unified approach to the vulnerability of minors. The main problem was the artificial and questionable differentiation between *sexual intercourse with a minor* and *sexual assault*, depending on the expressed or presumed consent of the victim.

Furthermore, the minimum age of sexual consent, set at 13 years of age, was considered far too low in relation to the psychological maturity of a minor and to European standards in this area. This regulation allowed for situations in which sexual acts with minors were treated relatively leniently, in the absence of physical coercion, which seriously undermined the legal protection granted to the child.

In practice, courts faced major difficulties in establishing the meaning of the term „consent", especially in the case of minors who were under the influence of authority, moral coercion or emotional manipulation. Also, there were no express provisions that would deal with sufficient rigor with the relationships of dependency – family, professional, educational – between the perpetrator and the victim, which may compromise the minor's real freedom of choice.

1.3.*Relevant Decisions of the courts and the Constitutional Court*. The practices of the courts have reflected these ambiguities, with sometimes contradictory solutions in similar cases. A significant example is represented by Decision No.250/2019 of the Constitutional Court, which analyzed the compatibility of the regulation of Art.220 CC with the fundamental right to dignity and protection of minors. Although the court did not declare the norm unconstitutional, it emphasized the need to clarify the notion of consent in the case of minors and reiterated the positive obligation of the state to ensure a sufficiently protective legislative framework [8].

Also, in the practice of the High Court of Cassation and Justice, there were decisions in which the legal classification of an act depended exclusively on the differentiated interpretation of consent and the relational context between the victim and the perpetrator, which led to an oscillating jurisprudence and the impossibility of creating a unitary standard of protection for minors who are victims of sexual acts [9].

2.Amendments brought by Law No.217/2023. 2.1.Context of the adoption of the 2023 regulations. The adoption of Law No.217/2023 was carried out in the context of a pressing need to reform the criminal framework regarding the protection of minors against sexual assault. In recent years, the previous legislation has proven insufficient, both in terms of the clarity of the norms and the effectiveness of the sanctions. Article 220 of the old Criminal Code, which criminalized sexual intercourse with a minor, allowed for subjective and controversial interpretations regarding the consent expressed by minors between the ages of 13 and 15, leaving room for an oscillating and, at times, unrigorous jurisprudence [8].

Domestically, the opinions consistently expressed by non-governmental organizations, child protection institutions and representatives of the judiciary revealed that the old provisions of the Criminal Code did not provide effective protection for minors against sexual abuse. Article 220 CC, in its previous form, allowed for criminal liability to be circumstantial depending on the consent of a minor aged 13-15, an approach considered incompatible with the psychological reality and the degree of maturity of the child [2]. At the same time, the previous legislation did not provide a coherent solution for cases in which minors were subjected to sexual acts without physical violence, but in contexts of manipulation, psychological coercion or abuse of authority.

This state of affairs has generated numerous controversial situations in judicial practice, in which perpetrators of serious acts have benefited from leniency on the basis of interpretable legal provisions. As a result, public confidence in the ability of the criminal justice system to effectively protect minors has been considerably affected. In parallel, international pressure played a significant role. Bodies such as the UN Committee on the Rights of the Child [21] and GREVIO (a Council of Europe body) [20] have addressed critical observations to Romania regarding the lack of clear standards of protection for child victims of sexual abuse. They recommended harmonizing national legislation with instruments such as the Lanzarote Convention [5] and the Istanbul Convention, emphasizing the minimum age of sexual consent and the need to explicitly criminalize acts committed by persons in positions of authority over minors [19].

Therefore, Law No.217/2023 was conceived as a broad legislative response to the multiple deficiencies reported. The reform of the Criminal Code, as stated in the Explanatory Memorandum, aims to strengthen the protection of minors, standardize judicial practice and align the Romanian regulatory framework with European standards in the field of child rights protection [7]. One of the key changes is the establishment of a single and absolute age of sexual consent at 16 years. Thus, any sexual act with a minor who has not reached this age is considered, from a criminal point of view, to be devoid of legal validity of consent, even if it was explicitly expressed or apparently assumed by the victim.

This change eliminates the former legislative "grey" area between 13 and 15 years of age, in which consent was interpreted on a case-by-case basis. It therefore ensures a more extensive and predictable legal protection for minors, in line with European standards and GREVIO recommendations [20].

2.2.Introduction of the crime of "Sexual assault committed against a minor" – Art. 219¹ CC.

One of the most important legislative innovations brought by Law No.217/2023 is the introduction of article 219¹ in the Criminal Code, which establishes a distinct criminal offense: sexual assault committed against a minor [3]. This regulation marks a significant step in strengthening the regulatory framework regarding the criminal protection of mi-

nors, by explicitly recognizing their vulnerabilities in the face of sexual behavior.

Prior to this amendment, acts that were not a constitutive element of rape [2, Art. 218], but had an obvious abusive nature, were classified either under Art.219 (Sexual assault) or under Art.220 (Sexual act with a minor), depending on the age of the victim, the existence of consent and the means by which the act was committed [2]. These classifications were often confusing and left room for non-uniform interpretations by the courts.

Article 219[1] aims to fill this legislative gap and create a special sanctioning regime for situations in which sexual acts are committed on a minor who has not reached the age of 16, even in the absence of actual violence. Essentially, it establishes a legal presumption of lack of valid consent when the victim is a minor under 16, the expressed consent having no legal relevance in these situations.

According to the new norm, the act consists of "acts of a sexual nature, other than those provided for in Art. 218, committed on a minor who has not reached the age of 16" [3]. Thus, all forms of sexual touching, physical contact of a sexual nature, indecent exposure or other conduct that may affect the sexual integrity of the minor are criminalized, without being limited to the penetration characteristic of rape [3, Art.219]. This broader definition is consistent with modern concepts of child protection and reflects the practice of other European states.

The penalty provided is imprisonment from 3 to 10 years, to which may be added, according to the general provisions, the prohibition of the exercise of certain rights, such as the right to hold teaching positions or to carry out activities that involve direct contact with minors [3, Art.219].

Through this autonomous incrimination, the legislator clarified the boundaries between the different acts of a sexual nature, while ensuring a differentiated criminal treatment for acts committed against minors, in relation to those committed against adults. Article 219[1] reflects the idea that the minor must be treated as a distinct category of victim, requiring reinforced criminal protection and unconditional by elements such as explicit opposition, physical force or apparent discernment expressed through consent.

This new rule also aligns with the requirements of the Lanzarote Convention [5], which imposes on signatory states the obligation to criminalize all sexual acts with a child, regardless of the form of coercion, if the victim has not reached the legal age of consent. In addition, the criminalization is adapted to current social realities, in which sexual abuse can take subtle, psychological or manipulative forms, which escape the classic criteria of physical force.

Thus, Article 219[1] of the Criminal Code is not just a simple legislative addition, but represents an essential instrument for protecting minors against any form of violation of their sexual integrity [2, Art.219]. It is a criminal policy measure with a major impact, which will, however, require judicious application by the courts and careful framing in the context of each case, in order to avoid both excesses and impunity.

2.3. Elimination of Art.220 CC and redefinition of other crimes. The former crime of sexual intercourse with a minor [2, Art.220] was repealed, and its content was taken over, reconfigured and redistributed in the new articles. A clearer and more severe regulatory model was chosen, in which criminal protection no longer depends on the analysis of the consent expressed by the minor, but on the simple fact that he has not reached the legal age.

In addition, Art.221 on sexual corruption of minors was amended to cover more

clearly the acts by which an adult determines or facilitates the maintenance of sexual acts between minors, with corrupt or manipulative intent [3, Art.221].

2.4. *Aggravating circumstances and causes of non-punishment*. The new regulation introduced by Law No.217/2023 is not limited to a clearer definition of the crime of sexual assault on minors, but also includes a series of aggravating circumstances that reflect an increased degree of social danger when the acts are committed under certain conditions of increased vulnerability of the victim or abuse of power by the aggressor. In parallel, the legislator also introduced a clause of non-punishment in order to avoid criminalizing situations of consensual relationships between minors or between young people of similar ages.

Aggravating circumstances. According to the new provisions, in the case of the crime of sexual assault committed against a minor, the special limits of the punishment are increased when the following aggravating circumstances are met:

– The perpetrator is a family member of the minor or lives with him/her. In such cases, the act acquires a deeply abusive character, by violating a relationship of trust and authority, which justifies a more severe sanction. This situation reflects a double vulnerability of the victim: as a minor and as a person emotionally, materially or legally dependent on the aggressor;

– The minor is in the care, education, protection, guard or treatment of the perpetrator. This refers to situations in which the perpetrator has a position of formal authority over the child (e.g. teacher, psychologist, doctor, social worker, coach, educator, etc.). These cases involve an abuse of trust and an unbalanced power relationship that affects the minor's real freedom to oppose the act;

– The act resulted in bodily harm, a mental disorder or endangered the minor's life. In these situations, the consequence produced has a serious traumatic character and objectively justifies the aggravation of criminal liability.

In all the cases mentioned, according to current regulations, the punishment is increased by up to 3 years compared to the special maximum provided for the simple form of the crime. This legislative solution reflects the criminal policy of increased protection of the minor when his vulnerability is exploited in a family, institutional setting or by producing particularly serious consequences.

Causes of non-punishment. In addition to strengthening the sanctioning framework, Law No.217/2023 also introduces a cause of non-punishment to avoid the indiscriminate application of the criminal norm in situations where there is no real relationship of exploitation or abuse. Thus, the act committed by a person who has not reached the age of 21 does not constitute a crime, if:

– The age difference between the perpetrator and the victim does not exceed 5 years;

– The sexual intercourse was not accompanied by coercion, abuse of authority, manipulation or other forms of pressure [3, Art.219].

This regulation aims to protect emotional and sexual relationships between adolescents, where they are based on mutual consent and do not involve a serious imbalance of power or maturity. It is an approach adopted by other European legal systems, which recognize that the automatic criminalization of all sexual relationships between young people of similar ages could lead to judicial abuses, unnecessary stigmatization and effects contrary to the best interests of the child.

Both the aggravating circumstances and the cause of non-punishment introduced in the new regulations reflect a balanced approach: on the one hand, cases of actual abuse are sanctioned more severely, and on the other hand, those situations in which there is no abusive conduct in the criminal sense are excluded from criminal liability. This fine differentiation between forms of sexual behavior, the relational context and the age of the subjects is essential for the fair and proportionate application of the criminal norm in relation to social reality.

3. New elements and impact on the legal system. 3.1. Extension of legal protection for minor victims. One of the most important dimensions of the criminal reform brought about by Law No.217/2023 consists in the significant expansion of legal protection for minor victims. This expansion does not only aim to broaden the scope of incriminated acts, but also to formally recognize the child's vulnerable status in relation to sexual acts, regardless of their form. Until the amendments brought about in 2023, Romanian criminal legislation was based on a vision that allowed the relativization of the consent expressed by minors between 13 and 15 years of age. This perspective was abandoned in favor of a clear and firm solution: establishing the age of 16 as the threshold below which any sexual act is automatically considered abusive. In this way, minors under this threshold acquire objective criminal protection, not conditioned by the expression of consent or the apparent capacity for discernment [2, Art.219].

By autonomously criminalizing sexual assault committed against minors [2, Art.219[1]], the law broadens the range of punishable acts, including not only acts of penetration (characteristic of rape), but also other acts of a sexual nature, such as indecent touching, forcing the minor to witness or participate in sexual behavior, or exposure of a sexual nature. As is known, there are doctrinal opinions according to which acts of sexual assault are absorbed only by the consummated crime of rape, and not by the attempted crime of rape, in which case the attempted crime of rape and the crime of sexual assault will be considered concurrent [13, p.99]. In another decision, the Constitutional Court held that the phrase "*favors of a sexual nature*" has the usual meaning of the terms, meaning any advantages with sexual content granted to the active subject of the crime provided for in the criminal norms [11].

This opinion is also embraced by other authors [12, p.39], the present extension reflecting a more nuanced understanding of sexual assault, which is no longer reduced to the physical criterion, but also takes into account the psychological and relational dimension of abuse. Thus, minors benefit from criminal protection also in cases of subtle or symbolic abuse, which previously often remained unsanctioned or difficult to legally frame [9].

Legal protection has also been strengthened by tightening the punishment regime applicable to acts committed against minors. The acts provided for in Art.219[1] are sanctioned with imprisonment from 3 to 10 years, a punishment superior to the regime applicable to the general form of sexual assault [4, Art.219].

Furthermore, if the act is committed by a person who has a relationship of authority or dependence towards the minor (family member, educator, caregiver, etc.), legal aggravating factors are applied that can increase the special maximum sentence by up to 3 years. These provisions recognize the increased potential for trauma and the difficulty of the minor to oppose in contexts of subordination, adding an additional level of legal protection.

In this context, during 2023, the legislator made two significant amendments to the provisions of the Criminal Code, the first through Law No.217/2023 [3], and the second, through Law No.424/2023 [4], which amended Law No.217/2023, both coming into force on 1 January 2024.

The new law also introduces a reason for non-punishment in the case of an age difference of less than 5 years between the perpetrator and the victim, in order to avoid the automatic criminalization of intimate relationships between adolescents or young people of similar ages [3]. This provision offers a balanced framework of protection: it protects the minor against abuse, but without penalizing consensual interactions, as long as there is no significant imbalance of power or influence.

This fine distinction, clearly introduced for the first time in Romanian criminal law, reflects a more mature understanding of the social and emotional realities of adolescence, but also a desire to prevent unnecessary criminal labeling of young people involved in consensual couple relationships.

In conclusion, the extension of legal protection for minor victims through the new criminal regulations translates into:

– Formal recognition of the child's vulnerability;

– Detailed criminalization of various forms of sexual abuse;

– Severe sanctioning of abuses committed in contexts of authority;

– The application of a differentiated and proportionate approach, depending on the context.

All these elements contribute to the consolidation of a fairer, more efficient and better adapted legal system to protect the best interests of the child.

3.2.*Sanctioning regime and specific aggravating factors*. The reform brought by Law No.217/2023 not only redefines and clarifies sexual crimes committed against minors, but also introduces a sanctioning regime adapted to the gravity and particularities of these acts, with an emphasis on the relationship between the victim and the perpetrator, the context in which the act is committed and the consequences for the victim.

The new crime of sexual assault committed against a minor, introduced in Art.219[1] of the Criminal Code, is sanctioned with a custodial sentence of between 3 and 10 years, as well as with the prohibition of the exercise of certain rights (e.g. the right to hold teaching positions, to work with children, etc.) [4]. This sanctioning framework reflects an aggravation compared to the general form of the crime of sexual assault, where the sentences range from 2 to 7 years, in the simple form [2, Art.219].

The differentiation of the punishment regime depending on the age of the victim underlines the legislator's intention to offer extended and priority criminal protection to minors, treated as a vulnerable category, regardless of their apparently voluntary or consensual behavior.

For the acts provided for in Art.219[1], the legislator provides for express aggravating circumstances, which determine the increase of the special maximum of the sentence by up to 3 years. These are:

a) *Family or cohabitation relationship*. If the act is committed by a family member of the victim or by a person who cohabits with the minor, it is considered that a fundamental relationship of trust is violated. Intra-family abuse is recognized as having a more severe psychological and emotional impact on the victim, often accompanied by feelings of shame, fear, confused loyalty and prolonged silence, which prevent the identification

and reporting of the abuse.

b) *Position of authority over the minor*. A further aggravation occurs when the perpetrator has responsibilities for the care, education, protection, custody or treatment of the minor. This category covers people such as teachers, sports coaches, psychologists, doctors, maternal assistants or other professionals who, by the nature of their function, exercise legitimate authority over the child. Abuse of this position denotes a serious betrayal of public and personal trust, which is why the law intervenes with a harsher sanctioning regime.

c) *Producing serious consequences for the victim*. The act is also aggravated if it causes bodily harm, serious mental disorder or endangers the life of the minor. In this case, not only the nature of the act, but also its concrete result justifies an additional penalty, as it reflects an increased intensity of the attack on the physical and mental integrity of the child. These consequences may result from the violence of the act itself, but also from post-event psychological trauma (e.g. anxiety disorders, depression, dissociation, suicidal risk).

In addition to the main prison sentence, courts may apply complementary measures such as prohibiting the exercise of certain rights – for example, the right to carry out activities that involve direct contact with minors, to hold public office or to approach educational or childcare institutions. These prohibitions contribute to the prevention of recidivism and to the protection of environments frequented by minors, being in line with the case law of the European Court of Human Rights on the protection of the child's right to private life [11].

Overall, the sanctioning regime of the new crime provided for in Art.219[1] CC reflects a firm criminal policy, oriented towards the real and efficient protection of minors. The severity of the punishment is adapted to the context and the relationship between the perpetrator and the victim, while the aggravating factors provided for by the law correspond to the most frequent risk situations identified in judicial and psychological practice.

This new legal approach creates a more coherent criminal framework, capable of providing a proportionate and differentiated response to the complexity of situations of sexual abuse of children.

3.3.*Causes of non-punishment – analysis of the age difference exception*. Within the new regulation introduced by Law No.217/2023, the legislator considered not only the tightening of criminal liability in cases of sexual assault on minors, but also ensuring the proportionality and individualization of the criminal sanction depending on the nature of the relationship between the victim and the perpetrator. In this regard, a non-punishment clause was introduced that covers situations in which the age difference between the perpetrator and the minor is relatively small, and the act does not involve coercion, manipulation or abuse of authority.

According to the new provisions, an act committed by a person who has not reached the age of 21 does not constitute a crime, if:

– The victim is at least 13 years old;

– The age difference between the perpetrator and the victim does not exceed 5 years;

– The act was not committed through coercion, abuse of authority, deception or other forms of pressure or manipulation.

This provision applies exclusively to the crime of sexual assault committed against

a minor and aims to avoid excessive penalization of consensual relationships between young people, especially during adolescence. This exception starts from the recognition of the fact that, in certain situations, sexual relations between young people of similar ages can exist with mutual consent, in a context of emotional, affective and psychological equality [15]. The automatic criminalization of these relationships would be equivalent to a disproportionate intervention of criminal law in private life, without sufficient justification in the absence of a real danger to the minor.

From a criminal policy perspective, a clear demarcation is sought between situations of abuse and those in which the age difference does not create a major imbalance of authority or maturity between the parties. The exception reflects an approach adopted in other European legal systems, known as the "Romeo and Juliet laws", intended to protect adolescents from unnecessary criminal labeling, which can have disproportionate social and legal consequences.

The exercise of this cause of non-punishment is strictly conditional. In the cumulative absence of all the requirements, the act remains criminalized. In doctrine, some authors have stated that "it is not necessary for the commission of the crime that the meeting has taken place or has at least been accepted by the minor. If in the same circumstance, following the proposal made by the adult, the sexual act or act of a sexual nature took place, only the crime of rape of a minor or sexual assault of a minor will be retained, the previously made proposal being naturally absorbed by these" [15, p.234]. Thus:

– The minor must be at least 13 years old, an age considered the minimum for expressing relatively significant consent (but not recognized in other situations);

– The perpetrator must not be 21 years old, establishing a reasonable threshold between adolescence and full criminal maturity;

– The age difference must be no more than 5 years, on the idea that a greater gap would already imply an imbalance of influence;

– The act must not involve any element of coercion, manipulation, abuse of trust or position of authority, essential criteria in delimiting criminal acts from those tolerated by law [14, p.212].

This exception does not apply, therefore, in situations in which the perpetrator is a teacher, tutor, coach, doctor or has another institutional or personal position that gives him authority over the minor – even if the age difference is small.

From a practical point of view, this provision requires a detailed analysis of the relational context, which is the responsibility of the court. It will be necessary to carefully examine the dynamics between the perpetrator and the victim: the nature of the relationship, the way in which the contact was initiated, whether there was pressure, emotional manipulation or psychological dependence. In the absence of clear evidence of abuse, the court may decide to apply the cause of non-punishment.

At the same time, a challenge can be anticipated in the uniformity of judicial practice, in particular in the interpretation of the criterion of "lack of coercion or manipulation", which may vary depending on the perception of the judge, the evidentiary context and the psychological expertise presented.

Far from being a breach in the system of protecting the interests of the child, this cause of non-punishment has a balancing value. It prevents the use of criminal law as an instrument of absolute moral control and contributes to the individualization of criminal liability, in accordance with the principles of proportionality and sanctioning humanism.

Thus, the law recognizes that not all sexual contact between minors or young people is abusive by definition, but only to the extent that it reflects a relationship of force, influence or subordination.

The age difference exception introduced by Law No.217/2023 constitutes a necessary legislative instrument to ensure a fair demarcation between the protection of real victims and the avoidance of excessive criminalization of consensual relationships between adolescents. However, its correct application requires a nuanced judicial practice, based on concrete assessments of each situation and on interdisciplinary expertise (legal, psychological, social).

3.4. *Possible problems of interpretation and application in practice*. Although Law No.217/2023 represents an important step towards strengthening the protection of minors against sexual assault, its practical implementation raises a number of interpretative and application challenges, which could generate difficulties for judicial bodies. These problems relate both to the abstract nature of newly introduced legal concepts and to the realities on the ground – such as the lack of specialized expertise, evidentiary difficulties and the risk of non-uniform jurisprudence.

One of the most sensitive issues concerns the assessment of the context in which a minor under 16 years of age would have apparently expressed consent. Though, the law establishes that acts committed against minors under this threshold are, in principle, criminalized regardless of consent, in practice, the defense may invoke the absence of coercion or the "voluntary" nature of the act. Thus, a potential space for relativization is created, especially in cases where the minor's behavior is presented as active, cooperative or even initiatory.

This situation may lead to differences of interpretation regarding the applicability of Art.219[1] in relation to other norms or even to errors in establishing the existence of the criminal act. In practice, one of the recurring challenges will be the delimitation between the crime of rape (Art. 218 CC), sexual assault (Art. 219 CC) and sexual assault on a minor (Art. 219[1] CC). Although the new regulations aim to clarify this aspect, conceptual overlaps persist, especially when acts of a sexual nature are carried out under ambiguous conditions: emotional pressure, deception, passive coercion, etc.

Thus, judicial practice will have to develop clear criteria for distinguishing between the qualified form of rape and that of sexual assault, as well as between ordinary sexual assault and that committed on a minor. In the absence of official guidelines or consolidated case law, there is a risk of inconsistent legal classification, with direct effects on the classification of punishment.

Another sensitive area of practical application is the use of the cause of non-punishment in the case of small age differences between the perpetrator and the victim. This requires a complex analysis of the context of the relationship, to determine whether there was any form of influence, manipulation or psychological pressure – notions that are difficult to define and prove in the absence of a clear methodological framework.

Courts will have to rely frequently on psychological and social expertise, which implies more intense interprofessional collaboration, but also the risk of contradictory conclusions in the absence of a unitary judicial practice.

In cases involving sexual assault on minors, the evidence is often fragile and dependent on the victim's statements, which may be inconsistent due to age, fear, confusion or trauma. In the absence of direct evidence (e.g. biological traces, eyewitnesses), courts

must assess the subjective credibility of the child, which entails major risks of both miscarriage of justice and revictimization.

There is also a risk that, in certain cases, the authorities may be reluctant to order preventive measures or to prosecute, due to the complexity of the files or the high evidentiary burden, which could lead to de facto impunity.

The new regulations require or adapt the legal culture and the interpretation tools used by magistrates, police officers, prosecutors and lawyers. In the absence of interdisciplinary training focused on child psychology, the dynamics of abuse, communication with minor victims and new criminal concepts, there is a risk of faulty application of the norm or formalistic approaches, incompatible with the goal of real child protection.

Despite the clarifications brought by Law No.217/2023, significant problems of interpretation and application remain, which may affect the efficiency of the new criminalization. For the reform to produce real effects, not only a unitary jurisprudence is necessary, but also an institutional and professional adaptation of those who apply the law, through continuous training, interprofessional cooperation and the development of judicial practices focused on the best interests of the child.

4. *Comparative analysis with other legal systems*. In order to understand in depth the modernizing and European trend aligned nature of the new Romanian regulation, a comparative analysis of the legislative solutions adopted in other legal systems is essential. This reveals common points, differences in approach and the place occupied by Romania in relation to European standards on the protection of minors against sexual crimes. "When an adult uses force or threats to force a child to engage in sexual activities, it is quite clear that that child has not consented to those activities. Confusion arises when the adult and the child engage in sexual activities in which no coercive behavior is evident or appears to be present" [17, p.456]. It is noted in international doctrine that "the absence of violence or coercion is frequently interpreted in the discourses of abusers or their defenders as consent on the part of the child" [17, p.458].

4.1. *Age of sexual consent in comparative law*. Establishing a minimum age of sexual consent is a fundamental legal instrument in the protection of minors. In most European countries, it varies between 14 and 16 years, and in some cases exceptions are provided for relationships between people of similar ages.

In France, following the 2021 reform, the age of consent was set at 15 years with an impunity clause if the age difference between the partners is less than 5 years and there is no coercion or violence.

In Germany, the general age of consent is 14 years, but sexual acts with a minor between 14 and 15 years are criminalized if the perpetrator is over 21 years old and exploits the victim's immaturity.

In Italy, the minimum age is 14 years, but this increases to 16 years if the perpetrator has a position of authority over the victim (e.g. teacher, tutor).

In Spain, since 2015 the age of consent is 16, without an automatic exception, but with jurisprudential interpretations favorable to relationships between adolescents.

Nordic countries (Sweden, Denmark, Norway). The age of consent varies between 15 and 16 years, and the legislation is usually stricter regarding age differences and authority relationships.

Therefore, the Romanian regulation that sets the age of consent at 16 and introduces an exception of non-punishment for age differences of less than 5 years aligns with the

French and Spanish models, avoiding both insufficient protection and excessive penalization.

4.2. *Distinct criminalization of sexual acts against minors*. Many European countries, like Romania (through Art. 219[1] CC), provide for separate criminalizations for acts of a sexual nature committed against minors, regardless of whether they are accompanied by violence or not.

France and Belgium use the notion of "atteinte sexuelle sur mineur" (sexual assault on a minor), distinct from rape, applicable to acts that involve touching, obscene gestures or acts with a sexual connotation, without legal consent.

The Netherlands separately criminalizes sexual abuse of a minor, with a wide range of acts that vary from acts of contact to acts without contact (e.g. child pornography, solicitation of sexual images).

The United Kingdom provides in the Sexual Offences Act 2003 several offenses graded according to the age of the victim, the nature of the act and the position of the perpetrator (e.g. sexual activity with a child, causing a child to watch a sexual act, abuse of position of trust).

Romania aligns itself with these trends by introducing Art.219[1], which covers not only "classic" sexual acts, but also those that do not involve penetration but affect the sexual integrity of the minor. This diversification of the forms of criminalization is essential to reflect the complexity and subtlety of modern forms of abuse.

4.3. *Aggravating circumstances in comparative law*. Most European systems treat relationships of authority, dependence and trust as aggravating factors. For example:

– In Italy acts committed by persons in positions of responsibility towards a minor are classified as aggravated with increased penalties and additional prohibitions.

– In Germany aggravating circumstances apply if the perpetrator is an educator, doctor, priest or other type of professional who holds a position of influence.

– The United Kingdom includes specific crimes for abuse of position of trust, even when the act is apparently consensual.

– The Romanian regulation reflects this trend through the aggravating circumstances expressly provided for in Art.219[1] para.(3) CC, applicable to family members, persons who live with the minor or are responsible for his education and supervision.

4.4. *Complementary measures and prevention in comparative law*. In Western states, legal protection is not limited to criminal punishment, but extends to complementary and administrative measures:

In France, prohibitions on exercising professions involving contact with minors apply, as well as the obligation to register in special sex offender registers. Following the adoption of Law No.478/2021, the material element of the crime of rape was clarified, specifying that these can also extend to other acts of a sexual nature [16].

In Germany and the Netherlands, convicts may be required to undergo psychological treatment or post-penal monitoring.

In the United Kingdom, Sexual Harm Prevention Orders (SHPO) are applied, which can impose individualized restrictions (travel, contact, internet, etc.) [25].

Romania, although it provides for the prohibition of certain rights as a complementary punishment, does not yet have a coherent framework for post-conviction supervision or for the prevention of recidivism in the case of sexual offenders, which may be a point for future legislative development [23]. The comparative analysis shows that Romania

aligns, through Law No.217/2023, with a modern European model of criminal protection of minors, characterized by:

– Establishing a high age of consent (16 years);

– Distinct criminalization of sexual acts on minors;

– Recognition of aggravating circumstances related to authority and dependence;

– Introduction of a cause of non-punishment in cases of approaching age [3].

However, compared to other states, Romanian regulation can still be completed, especially with regard to post-penal measures, the supervision regime and the continuous training of legal and psychosocial personnel involved in such cases [24].

Conclusions and proposals for "*law ferenda*". The adoption of Law No.217/2023 and the introduction of Article 219[1] in the Criminal Code, mark significant progress in the protection of minors against sexual crimes. The reform brought about not only improves the clarity of legal norms and the coherence of criminalizations, but also aligns Romanian criminal legislation with international and European standards, strengthening the concept of child protection as a fundamental social value.

Among the most important contributions of the new regulation are:

– Establishing a single and absolute age of sexual consent at 16 years of age, which offers uniform and predictable criminal protection.

– Distinct criminalization of sexual assault on a minor, as an autonomous crime, adapted to current social and psychological realities.

– Recognition of authority, care and family relationships as express aggravating factors, with a role in individualizing the punishment.

– Introducing a cause of non-punishment in cases where the age difference is small and there is no abuse, which reflects a balanced vision between protection and proportionality [22].

Nevertheless, the effective application of the new rules depends on the capacity of the judicial system to coherently interpret and correctly use the legislative instruments, in an interdisciplinary context and empathetic to the specificities of minor victims.

Proposals for "*law ferenda*". In order to complete and strengthen the current legal framework, several directions for future reflection and legislative intervention are required:

a) Establishing post-criminal supervision mechanisms for sexual offenders. In line with European good practices, Romania should introduce measures such as:

– Special registries for sexual offenders;

– Personalized bans (professional, geographical, digital);

– Active post-conviction supervision measures.

These instruments would contribute to the prevention of recidivism and the effective protection of vulnerable communities.

b) Clarifying through official guidelines the limits of application between Art.218, 219 and 219[1] Criminal Code. It is necessary to issue official guidelines (for example, from the High Court of Cassation and Justice or the Public Ministry) that provide clear criteria for delimiting between rape, sexual assault and sexual assault on a minor. These would ensure uniformity of practice and reduce uncertainties in law enforcement.

c) Explicit introduction of "non-contact" offences (e.g. grooming, sexting, solicitation of indecent material). Although partially covered by the legislation on child pornography, certain behaviors such as "grooming" (gaining the trust of a minor for sexual purposes) or

requesting images of a sexual nature are not regulated clearly enough. A modernization of the Criminal Code is necessary in line with the current digital environment.

d) Continuous specialized training of magistrates and criminal investigation bodies. The correct application of the new provisions requires the development of professional skills in areas such as child psychology, trauma, empathetic communication and behavioral analysis. Training should be mandatory and adapted to real needs in practice.

e) Strengthening assistance mechanisms for minor victims. In parallel with the criminal norms, there is a need to create specialized centers for counseling, protection and rehabilitation of minor victims of sexual abuse, as well as to simplify judicial procedures to avoid re-traumatization.

The criminal reform carried out by Law No.217/2023 is a necessary and welcome step in the process of modernization of the criminal justice system in Romania. However, the effectiveness of this reform depends, crucially, on the capacity of institutions to implement it with responsibility, competence and sensitivity to the best interests of the child. Only in this way can the law become a real instrument of protection, not just a formal symbol of the legislator's will.

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SECTION I. CRIMINAL SCIENCES
SECŢIUNEA I. ŞTIINŢE PENALE

CZU: 343.9

REFLECTION OF IDEAS AND CONCEPTS PROMOTED WITHIN CRIMINOLOGICAL SCHOOLS ON THE HUMANIZATION AND RATIONALIZATION OF CRIMINAL POLICY

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Summary
The article analyzes the main criminological schools – classical, positivist, and postmodern – emphasizing the core ideas promoted within them. It argues for the development of an integrated criminological school, capable of systematically and creatively incorporating the strengths of existing theories. Such an approach would contribute to enhancing the effectiveness of criminal policy in the field of crime prevention and control.

Keywords: classical criminology, positivist criminology, postmodern criminology, integrated criminology, criminal policy, humanization, rationalization, crime prevention.

Introduction. Criminology emerged as a distinct science following its separation from criminal law, through the delimitation of its own research object – crime and the mechanisms that generate it. In this process, the ideas and theories developed within criminological schools have fundamentally contributed to the development of a more humane and rational criminal policy, offering theoretical foundations for the prevention and control of crime. Currently, the idea of an integrated criminological school, which combines contributions from these currents, is gaining increasing recognition in the international scientific community. This orientation aims at a theoretical and practical synthesis of the most relevant concepts in the history of criminology, oriented toward a holistic and effective understanding of the criminal phenomenon.

Discussions and results obtained. *1. The Classical School of Criminology.* The classical school of criminology directly derives from the ideology of Enlightenment currents

that prevailed during the transition from feudalism to capitalism (17th-18th centuries). This era anticipated and later accompanied the reorganization of state, social, and spiritual life that took place after the bourgeois-democratic revolution in Europe. During this period, science distanced itself from the predominant theological interpretation of crime as a result of supernatural forces, seeking instead to offer rational theoretical explanations for the motives and concrete causes that drive individuals to commit crimes. At this stage, offenders began to be treated more humanely in the application of criminal punishments by state authorities.

The Enlightenment, represented by thinkers such as Voltaire, Montesquieu, Rousseau, Diderot, Kant, and Ferguson, played a decisive role in the emergence of this school. Under their influence, important works appeared in the second half of the 18th century that would have a significant impact on the evolution of criminal sciences. Particularly notable are Cesare Beccaria's (1738–1794) monograph "*On crimes and punishments*" (1764), and the writings of English scholar Jeremy Bentham (1748-1832).

Considered a true monument of legal philosophy, Beccaria's work anticipated the achievements of modern criminal law, placing humanism and reason at the forefront. He advocated for standing up against violence and the inquisitorial system, and emphasized the importance of crime prevention [1, p.XVII]. In fact, Beccaria's ideas revolutionized legal thinking and opened new horizons in the study of crime and criminal justice.

With regard to the death penalty, Beccaria believed its application was irrational, as it served as a demonstration of cruelty. Therefore, he proposed replacing capital punishment with life imprisonment, a sanction he viewed as both more humane and more effective [8, pp.172–175]. He also asserted that punishment should correspond not only to the committed act, but also to the personality of the offender, recognizing that the latter may be influenced by external factors – environmental, physical, and social. Punishment should take into account the individual characteristics of the offender.

Beccaria must be considered one of the most renowned promoters of criminological ideas of that era, and the classical school of criminal law should be seen as a criminological school in itself. In one section of "*On crimes and punishments*", he addressed in detail the causes of various categories of crimes and aspects related to their prevention [9, p.16], elements that form the object of modern criminological research. For instance, in the paragraph concerning theft, Beccaria states that economic conditions play a decisive role in its genesis, highlighting that theft results from misery and despair, committed by that unfortunate part of the population for whom property rights have left only the bare minimum for existence. He famously stated "...it is better to prevent crimes than to punish them. This is the main goal of every good law..." [8, p.146]. In terms of crime prevention, Beccaria proposed several measures which remain relevant today: street lighting at night, neighborhood watch patrols, combating social parasitism, drafting simple and clear laws accessible to all citizens, and improving the educational process for offenders.

A contemporary of Beccaria, English scholar Jeremy Bentham authored a series of works in criminal law and penology that include numerous criminological ideas (e.g., the theory of legislation, the limits of defined jurisprudence, the rationale of punishment). Bentham advocated for humanizing the penal system and reforming the penal enforcement process. He believed that one of the main causes of criminality was the imperfection of laws and was convinced that legislation could regulate human behavior to ensure happiness. In his view, every individual, aiming to gain maximum pleasure and suffer minimal

consequences, weighs the positive and negative outcomes anticipated by law. Depending on whether a crime brings more benefit or harm, the individual decides whether it is worthwhile to commit it. Hence, the law must provide a punishment that makes crime unprofitable and ensures the harm caused by punishment outweighs the benefit gained through the offense [3, p.47].

In the classical school of criminology, criminal policy is understood as the rational use of punishment. Punishment is the central force around which the reflections of C. Beccaria, J. Howard, and J. Bentham revolve in their famous works. Franz von Liszt, referring to criminal policy (in a narrow sense), described it as a systematic collection of basic principles according to which the state should fight crime through punishment and related institutions [10, p.7]. Therefore, the theses and ideas promoted within this school were revolutionary for their time, and their relevance and validity persist to this day.

2. The Positivist School of Criminology. The positivist school of criminology emerged in response to two key developments in European society during the second half of the 19th century: the rising awareness of increased criminality and the rapid progress of the natural and social sciences. In disciplines studying human beings, methods borrowed from the exact sciences were introduced, leading to the birth of anthropology, sociology, and statistics.

In contrast to the abstract science of the classical era, positivist criminology relied heavily on statistical data and other factual information about committed crimes. It also placed great emphasis on research based on experiments, through which empirical data on certain phenomena could be obtained.

Although this school includes many prominent figures – such as Cesare Lombroso, Enrico Ferri, and Raffaele Garofalo – each contributed original ideas to the study of criminal behavior, with visible differences among their viewpoints. The term "positivist" highlights their shared commitment to a common philosophical and methodological orientation: avoiding speculative, deductive reasoning and embracing empirical research grounded in observable and verifiable facts.

Primarily influenced by experimental studies of offenders, the Italian positivist school sought to overcome the limitations of the classical school by shifting focus from the legal notion of crime to the study of the offender and the causes of criminality.

Thus, positivist criminology evolved mainly along two directions: biological and sociological. Although these two currents initially had divergent views, over time their perspectives partially converged, eventually giving rise to psychological theories in criminology that integrated both approaches.

The positivist school is characterized by empiricism and determinism. Abandoning scholastic approaches and asserting the primacy of empirical facts (evidence), it shifted from the classical concept of free will to one of causality in criminal behavior. While positivist philosophy includes many ideas, the most influential for criminology are: evolutionism, materialism, and pragmatism.

Starting in the positivist era, the idea that objective laws govern society – and that understanding these laws scientifically has practical relevance – gained significant traction. This knowledge is grounded in the principle of common sense: people will do less harm if they do not stray too far from this principle. The positivist approach promotes the principle of sound reason because it supports objectivity (subordinating thought to reality, not vice versa), reality itself (since the object of study is always an observable fact, not a

product of imagination or abstraction), verifiability (as all positivist claims are fact-based and can be empirically tested), precision and coherence (the philosophy does not oppose real life), and utility (the positive method can be practically applied) [7].

The founders of the positivist school complemented one another, although their ideas did not merge completely. Each retained a distinct personality and approached the problem of crime and the criminal in a unique way. Despite this, they unanimously supported the thesis that crime primarily originates in the human organism, with an inherent organic predisposition serving as the root cause of criminal behavior.

The positivist school of criminology significantly influenced criminal policy theory by incorporating non-punitive measures into its framework. Greater attention was devoted to crime prevention, including the development of targeted social programs aimed at reducing poverty, racial inequality, and other related issues.

3. *The Postmodern School of Criminology*. While the positivists opposed traditional society and promoted a modernist project that replaced traditional values (particularly faith) with reason – yet still based their views on objective laws of social existence – the postmodernists go further by rejecting the very objectivity of such laws.

The central idea of the postmodern criminological school is the shift of focus from the objective content of criminality to its external aspect, perceived as a product of legal and penal construction. As a result, a paradoxical conclusion is drawn: the source of criminality is not socially dangerous activity, but criminal law itself. Following this logic, the most effective way to reduce crime would be to restrict the scope of criminal law regulation. Abolish criminal legislation, and crime would be "eliminated" instantly [4, pp.157–164].

The postmodernist interpretation of the nullum crimen sine lege principle expresses the idea of a conventional agreement on what is considered criminal. Thus, the ontological essence of crime is denied in favor of a relativistic understanding of its content. Given that criminal justice bodies participate in identifying criminal activity, crimes they fail to expose receive tacit approval and become part of a de facto legal practice. The absence of a legal response becomes a pathway to the legalization of criminal activity. The legal nature of criminology is thus rejected, and it is relegated to a sociological science, or more narrowly, a sociology of crime. At the same time, the possibility of understanding the laws of human existence is questioned; the concepts of truth and justice are abolished, and the entire universal legal experience of regulating social relations is dismantled.

These ideas appear destructive and ultimately discredit criminology as a field of cumulative knowledge. By failing to accumulate knowledge and disregarding the experience of past criminological research and earlier generations of criminologists, the science degrades into a field of perpetual discourse, where no one is right and everyone is right at the same time.

Postmodernism contains the potential to transform into its apparent opposite – totalitarianism. Human independence and individual atomization are merely illusory. In reality, the individual is caught in a web of role prescriptions whose nature and content are constantly changing. At the same time, blame for all the misfortunes that befall a person (such as job loss, illness, or unexpected circumstances) is attributed solely to the individual. This division – some enjoying benefits without responsibility, others bearing responsibility without benefit – is one of the practical outcomes of postmodernist thinking.

The postmodernist school of criminology lacks a criminal policy paradigm, as postmodernist methodology focuses on deconstruction and destruction, rather than con-

struction. Nevertheless, the creative potential of some postmodernist ideas cannot be denied. These ideas hold specific (technological) value, aiding the understanding of certain aspects of criminological reality and helping improve particular aspects of criminal policy, especially penal enforcement procedures.

4. *The Integrated School of Criminology*. Today, the idea of an integrated criminological school has gained widespread recognition. It is based on an interdisciplinary approach to the issues studied by criminological science. One of its core principles is the selective adoption of valuable ideas from earlier criminological schools, with emphasis placed on the following dimensions:

1) *Assimilation of the positive core ideas* from all previous criminological schools. For instance, in the classical school, the positive ideas include belief in free will, utilitarianism, trust in progress, the affirmation of human rights, and the rationalization of criminal policy. In the positivist school, the key contributions are the recognition of objective social laws, social evolution, and the practical significance of understanding these laws scientifically. As for the modern criminological school, its claims may not reach the level of a full-fledged methodology, but they are acceptable as working hypotheses in empirical research. These helps identify specific causal patterns, although they lack universal theoretical relevance.

2) *Creation of a universal methodology for scientific knowledge*, which represents the logical culmination of comparative criminology and one of its highest achievements. Indeed, it is necessary to accumulate global experience from criminological research and articulate it into a set of imperatives. As rightly observed by G. Howard, G. Newman, and W. Pridemore, the world is becoming increasingly interconnected under the pressures of globalization, and theories of crime and criminal justice are taking on a more transnational character in response to contemporary challenges [5]. There is no doubt that comparative criminology's appropriate response to these challenges should aim toward universality. The foundation of this methodology is rooted in dialectical thinking and a systemic approach.

3) *Adoption of positive historical experience* in the field of crime prevention and control. This includes principles such as reducing social conflicts, strengthening the collective moral climate, and improving social relationships. At the core of these ideas is the concept of justice, recognized as a fundamental value in institutional organization. Philosopher John Rawls correctly emphasizes in his seminal work that "...justice is the first virtue of social institutions, as truth is of systems of thought" [6, p.15].

4) *Interdisciplinary study of social deviance*, achieved by incorporating relevant findings from related fields such as sociology, psychology, law, and anthropology. This approach enables a deeper and more nuanced understanding of deviant behavior and the factors that generate criminality.

5) *Implementation of a constructive criminal policy*, which should focus on the following directions:

Social justice as the ideological foundation, in contrast to antisocial policies that favor elite interests;

Constitutional and legal legitimacy, which provides stability and authority to criminal policy decisions;

Institutionalization of criminological expertise in the legislative process, as a mechanism for preventing unintended consequences of legal acts;

Continuous criminological and legal monitoring, necessary for adapting policies to social realities;

Prioritization of victim protection, over excessive protection of offenders;

Stability as an essential feature, since an optimized criminal policy cannot be achieved amid constant reform.

Conclusions. From the Enlightenment rationalism of the classical school, through the determinism of positivism, and up to the explanatory pluralism of modern and postmodern criminology, the ideas promoted within these schools have essentially contributed to the humanization and rationalization of criminal policy. They have influenced the transformation of punishment from an act of repression into a tool of prevention, education, and social reintegration, adapted to the complexity of criminal reality.

At the current stage, the orientation toward an integrative analysis – encompassing sociological, psychological, and cultural perspectives – confirms the maturity of criminological science and its relevance in shaping effective policies for the prevention and control of crime.

Thus, the convergence of classical, positivist, and modern theories under the framework of an integrated criminology offers a solid conceptual foundation for comprehensively understanding criminal behavior and for intervening in its multiple causes.

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TERRORISM CRIMES: ANALYSIS ROMANIA – REPUBLIC OF MOLDOVA

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Summary

The phenomenon of terrorism is analysed in the specific context of Romania and the Republic of Moldova, and bilateral legislation, prevention and cooperation to combat this threat should be increasingly addressed. The article presents a detailed comparative analysis of the provisions of the Criminal Codes of the two countries and Law No.535/2004 in Romania, the case study of the cyber-attack on Ukraine and Europol's operation in 2020, the SWOT analysis between the two countries and a descriptive analysis. Both countries have harmonized their domestic legal systems in line with international standards, severely sanctioning the organization, financing and perpetration of terrorist acts. However, there are also significant differences. Romania has superior resources and technology, with sophisticated experience in deradicalization and preventive education programmes, while the Republic of Moldova relies on limited resources and faces specific vulnerabilities in the Transnistrian area, as well as trafficking in arms and people. Bilateral cooperation is also strongly supported by the European Union, through missions such as EUBAM Moldova, as well as joint anti-terrorist exercises which significantly enhance regional security. Decisive cooperation, the development of a common technological infrastructure and educational programs for integration and prevention are essential for the most effective control of terrorism. These will help the two countries to manage terrorist risks more effectively and integrate international security and justice mechanisms more efficiently.

Keywords: terrorism, prevention, international standards, cooperation, public authorities, anti-terrorist measures.

Introduction. One of the most dangerous challenges to global security is terrorism, and criminal operations of this type target both the political and economic, as well as the social spheres. As far as Europe is concerned, these crimes have specific characteristics in Romania and the Republic of Moldova. The two countries face similar problems due to their geography and interstate cyclical context. This paper addresses the legislation as well the prevention system and partnerships in the fight against terrorism in the bilateral context.

Methods and materials applied. The comparative legislative analysis of the provisions of the Romanian Criminal Code [1, Art.32-35] and the Criminal Code of the Republic of Moldova [5, Art.278-280], the case study method, through the concrete example of the cyber-attack in Ukraine and cooperation with Europol to illustrate the application of legislation in real situations and the descriptive analysis, which involves detailing the components of the offense (subject, object, objective side, subjective side, form of guilt) were used. We also used the qualitative comparative analysis, by identifying similarities and differences between the approaches of Romania and the Republic of Moldova in the field of counter-terrorism and the SWOT analysis method, by highlighting strengths (bilateral cooperation), weaknesses (limited resources of the Republic of Moldova), oppor-

tunities (international support, regional integration) and threats (Transnistrian area, arms trafficking).

As applied materials, we used legislation and official documents: the Criminal Code of Romania [1, Art.32-35], the Criminal Code of the Republic of Moldova [5, Art.278-280], Law 535/2004 of Romania on combating terrorism [2], EU Directive 2017/541 on combating terrorism and the EU-Moldova Association Agreement [3]. Reports and institutional sources on the EUBAM Mission, data and reports on Moldovan-Romanian cooperation within the Eastern Partnership were also taken into account.

Specialized studies and analyses, such as the analysis of security vulnerabilities in the Transnistrian area and official reports on cyber-attacks in the Eastern European region (e.g. Ukraine), as well as articles and official news on terrorist attacks or relevant international cooperation (AGERPRES, Europol, etc.) completed the range of materials used.

Discussion and results obtained. 1. *Analysis of offenses under the Romanian Criminal Code* (Art.32-35) *and Law 535/2004 on preventing and combating terrorism.* Offenses related to acts of violence, intimidation of the population and coercion of the authorities are regulated by the Romanian Criminal Code, Articles 32-35. The ultimate purpose of committing these crimes is to generate fear, disturb the social fabric or manipulate the decisions of public authorities, involving the use of physical or psychological violence, with the aim of creating a generalized internal state of terror. The active subject of this crime is any person of sound mind over the age of 14 years, including groups or organizations, as well as persons who finance or plan such acts.

Victims can be the general public, public institutions, authorities or individuals. First and foremost, the rule of law protects public order and national security – in this context, the life and physical integrity of citizens – and material assets such as infrastructure or public buildings. From an objective point of view, the crime includes direct attacks on the personal integrity and life of individuals, detonation of explosive devices, any type of attack with weapons, false information or fake news aimed at creating panic, disruption of important public or private infrastructure. These measures have the immediate aim of creating a state of uncertainty and threat. There must be a clear causal relationship between action and effect.

The subjective side of the crime refers to the direct or indirect purpose of the offender. Direct intent refers to cases where a perpetrator explicitly intends to install fear, while indirect intent is present when a perpetrator reconciles collateral damage or material damage. Motives can be political, ideological, economic, racial or personal. The only accepted form of guilt is intent, guilt is not accepted in these situations and, in addition, the purpose of intimidation must be explicitly demonstrated.

As regards the crime of compulsory action by state organizations, the active subject is any person or group of persons, including paramilitary or radical groups, while the passive subject is the government authorities. The legal object at risk is the normal functioning of public authorities, although it also protects the fundamental rights of citizens. The objective aspect consists of tangible actions – direct threats or kidnappings of officials, economic or technological sabotage or cyber-attacks on state infrastructure. The short-term effect is to put pressure on the authorities to do something. As for the subjective aspect, it is necessary to show that the perpetrator in this case clearly had the direct intention to influence the decision of the authorities for political, economic or

self-interested purposes.

Article 5(2)(a) of Law 535/2004 establishing the national framework for preventing and combating terrorism provides the anti-terrorist measures that may be taken by the authorities include, but are not limited to, monitoring, observing or intercepting the means of communication of persons involved or suspected of involvement in acts or activities related to terrorist groups or organizations or who finance terrorist groups or organizations. This is why, in order to protect national security, services such as the SRI, SIE, Police, DIICOT or even the Public Prosecutor's Office apply such measures. They involve a mix of surveillance of communications, monitoring of suspicious financial transactions and infiltration of extremist groups, with the immediate aim of disrupting attacks.

International cooperation based on the same law involves working with international organizations and partner states, in particular the EU and NATO, by exchanging operational intelligence, extraditing suspects and conducting joint counter-terrorism operations. The results of this cooperation should strengthen international security and increase its effectiveness in combating the threat of terrorism. The cooperation stems from international treaties and agreements to which Romania is a party.

2. Analysis of terrorist offenses under the Criminal Code of the Republic of Moldova (Art.278-280). The Criminal Code of the Republic of Moldova regulates terrorist offenses and related activities in Articles 278-280, aiming at a vigorous response of the prosecution authorities to the financing, planning and execution of terrorist acts. National legislation is also being harmonized with EU directives as part of the Moldova-EU Association Agreement. Article 278 criminalizes terrorism and includes acts such as: causing explosions, arson, attacks on key installations and state institutions, hostage-taking and attacks against heads of state. In these cases, the legal good is public security, constitutional order, the integrity of the state and the right of citizens to life and physical integrity.

The elements of the objective side are the serious effects that these actions directly cause, such as: loss of life, personal injury, significant material damage and the generation of widespread panic. For the subjective side, it is direct intent, and the aim is to intimidate the population or to make the authorities decide what they want. The subject can be individual or organized criminal groups. These punishments can range from 8 to 15 years' imprisonment and become life imprisonment when they cause the death of victims.

Article 279 criminalizes all acts related to the financing of terrorist acts, including the collection, transfer or making available of funds used for the planning of terrorist acts. The legal asset protected is the economic and financial order of the State, with the aim of preventing the financing of terrorist organizations. Finally, the material element is fulfilled when terrorist acts are materially supported by the use of direct financial resources that, to one degree or another, support attacks with a specific linking of the funds to violent acts carried out on the instructions of the donor. This is direct intent because the perpetrators know that the funds will be used to support terrorist acts. Active perpetrators can be natural or legal persons, including banks or charitable organizations, and penalties range from 5 to 10 years' imprisonment plus confiscation of assets used to fund the financing.

Article 280 focuses on the organization and training for terrorist purposes, covering actions such as: forming or directing terrorist groups, recruitment, training and logistical support for persons involved in terrorist acts. National and international security is the main legal subject matter, including the prevention of radicalization. The objective aspect

is that training and recruitment directly facilitate the commission of attacks, and that guilt is manifested in the form of direct intent, with the perpetrators explicitly seeking to prepare attacks. The subject of the offense is the person who recruits and trains potential terrorists, with penalties ranging from 8 to 15 years' imprisonment.

In parallel, the Republic of Moldova is making continuous efforts to harmonize domestic legislation with the EU Directive 2017/541 on combating terrorism. This entails criminalizing the financing and preparation of attacks, criminalizing terrorist travel and strengthening cooperation with European and international institutions such as Europol. Thus, the Republic of Moldova is aligning with European and international standards, actively contributing to preventing and combating radicalization and cross-border terrorism.

3. *Case studies: 2015 cyber-attack on Ukraine's electricity grid.* On December 23, 2015, a major power outage affected the Ivano-Frankivsk region of western Ukraine, disconnecting hundreds of thousands of homes and public institutions from electricity. The event was the first major case directly linked to a cyber-attack leading to a widespread blackout.

In parallel, Republic of Moldova is making continuous efforts to harmonize domestic legislation with EU Directive 2017/541 on combating terrorism, which includes criminalizing the financing and preparation of attacks, criminalizing terrorist travel and strengthening cooperation with European and international institutions like Europol. Thus, Republic of Moldova is aligning with European and international standards, actively contributing to preventing and combating radicalization and cross-border terrorism.

Further investigations by the Ukrainian authorities revealed that the attack was planned about six months before the incident. Investigations also confirmed that the attackers used a computer infrastructure located on Russian territory, which raised considerable suspicions, although the Ukrainian government did not directly accuse the Russian authorities.

In response, technicians worked manually to restore power in the affected regions. At the same time, Ukrainian energy companies were quick to add other cybersecurity measures, including system upgrades and staff training to detect and prevent future phishing attacks. In addition, Ukrainian law enforcement and intelligence agencies worked closely with specialists from international cybersecurity firms to investigate the incident and increase protection against similar threats.

4. *Working with Europol to dismantle terror cell in 2020.* In 2020, Europol coordinated a large international operation which resulted in the dismantling of a terrorist cell active across Europe. While detailed information on the specific operation is not publicly available, such interventions often involve certain well-established operational measures. These include the close exchange of information on suspects and their activities between the national security and police agencies of the EU Member States. Close monitoring, surveillance and interception of communications are carried out to obtain solid evidence and prevent planned attacks. Based on intelligence, the authorities conduct coordinated raids to arrest suspects and seize dangerous or illegal materials. Following these operations, a detailed analysis of the modus operandi of the terrorist groups involved is carried out to improve prevention and intervention strategies in case of future threats. The operations underline the crucial importance of international cooperation and exchange of information in the effective fight against terrorism, which helps to guarantee the safety of European citizens.

5. Specific challenges in fighting terrorism in the Republic of Moldova. The fight against terrorism in Republic of Moldova is largely predetermined by geopolitical and socio-economic conditions. Challenges include the vulnerabilities in the breakaway region of Transnistria and the risks associated with the illegal trafficking of people and arms.

The Transnistrian region, not internationally recognized and outside the control of the Chisinau authorities, is a major source of insecurity. The lack of legitimate state authority in this area makes it conducive to activities such as terrorism. With Russian military troops in the country, it is even more difficult for Moldova to monitor suspicious legislation and activities. A major problem is that the Moldovan authorities cannot conduct effective security and surveillance operations in Transnistria. This complicates the ability to track suspicious activities such as the financing and organization of extremist groups.

In addition, the lack of control over the movement of persons and goods from Transnistria to the rest of Moldova facilitates the transfer of persons wanted in connection with terrorist acts. This vulnerability is aggravated by the absence of a unified system of records between Chisinau and Tiraspol. The uncertain status of the region also makes it possible for people involved in radical and terrorist activities to hide or provide safe havens, as well as long-standing suspicions of collusion between organized crime networks in the region and extremist groups.

Another big threat is, in fact, the huge stockpiles of Soviet-era weapons that were guarded by Russian troops, the threat of illicit trafficking of these weapons into criminal and terrorist networks. Human trafficking is another problem, in the context in which Republic of Moldova presenting many transit points, and EU is one of the main destinations to this aspect. Criminal organizations involved in trafficking in human beings could indirectly collaborate with terrorist schemes, through activities such as procuring false documents or smuggling persons linked (directly or indirectly) to terrorism. At the core of these primary risks are the recruitment of women and minors for terrorist acts, as well as the use of illegal routes to infiltrate terrorists and launder money through human trafficking networks.

At the same time, Moldova is geographically located between destabilized regions (Ukraine and the Western Balkans), which makes it vulnerable to illegal arms trafficking. Extremist groups can also exploit traditional smuggling routes to acquire weapons. Local corruption is an additional vulnerability, facilitating the illegal transit of arms to conflict zones in Eastern Europe or the Middle East.

Adequately countering terrorism in the Republic of Moldova therefore necessarily involves addressing these specific vulnerabilities through concerted action at national level and intensified international cooperation.

6. Comparative analysis between Moldova and Romania in the fight against terrorism. Republic of Moldova and Romania, two neighbouring states with different histories and political contexts, are delineating their approaches in the field of counter-terrorism in line with international standards and active cooperation with regional and international structures, similar in substance.

The Republic of Moldova, like Romania, have included in their legislative framework the provisions of the main UN counter-terrorism conventions. Both countries have ratified the 1999 UN Convention on Combating the Financing of Terrorism, for example. In Romania, this is best exemplified by Law No.535/2004 on preventing and combating terrorism, while the Republic of Moldova has similarly transposed these provisions into Article 279 of

the Criminal Code, which explicitly criminalizes the financing of terrorist offences.

And the 1997 UN Convention for the Suppression of Terrorist Bombings is incorporated into the countries' national legislation, explicitly defining terrorist acts and including severe sanctions against perpetrators. Romania and Moldova have also brought their national legislation in line with UN Security Council resolutions on the prevention of radicalization to terrorism and training for terrorism, including clear punishments and effective preventive measures. Regional cooperation is also central to both countries' approaches to counter-terrorism. As a Member State of the European Union, Romania exchanges information with Europol and Eurojust. To this end, Romania plays an active role in the exchange of information, joint counter-terrorism operations and European judicial cooperation, while fully transposing EU Directive 2017/541 on Combating Terrorism into its national legislation. The Republic of Moldova is also a member of the Eastern Partnership and the Association Agreement with the EU, and is thus subject to intensive alignment of national legislation on terrorism prevention and, of course, harmonization with this new approach. Republic of Moldova cooperates closely with Europol, benefiting from the permanent exchange of information and operational data, as well as from the training and exchange of best practices organized by the European Union and its Member States, including Romania.

Romania and the Republic of Moldova have adopted an integrated and coherent approach in the fight against terrorism, which is reflected in the vigorous transposition of international standards and intensive cooperation with regional and international structures. These similarities highlight the need for successful and coordinated cooperation to prevent and combat common terrorist threats and have a positive impact on regional and international security.

6.1. Differences. Republic of Moldova and Romania have many common strategies and goals in the effort to combat terrorism and its risks; however, due to major differences (e.g. in available resources), particularly in the approaches used to prevent radicalization, there is a high risk for the Republic of Moldova in combating terrorism and organized crime due to the lack of financial and technical support. These constraints have direct and negative implications on the capacity of the Moldovan authorities to anticipate and respond adequately to security threats.

First of all, the low state budget for security and defence institutions hinders Moldova's options in terms of modern investments in infrastructure, advanced technologies and personnel training. As a consequence, Moldovan institutions are struggling significantly to obtain modern equipment necessary for effective surveillance and interception of likely communications.

Secondly, the Republic of Moldova is highly dependent technologically and financially on external support, especially from the European Union and bilateral partnerships (such as Romania and the United States). As a result, there are critical gaps in current border technologies to monitor suspicious entry and financial transactions – until the threats become too serious, when it may be difficult to intervene. These limitations create an increased vulnerability to terrorist activities and cross-border crime, reinforcing Moldova's dependence on international cooperation to effectively combat these threats.

Romania, on the other hand, has long experience and significant expertise in doing so through education and social integration programs aimed at deradicalization and prevention of extremism. These programs have been developed in line with EU standards and

international UN and OSCE recommendations. Romania implements educational campaigns in schools and universities, with a focus on permanent information on the risks of extremism and on developing critical thinking, tolerance and respect for cultural and religious diversity.

Romania is also running integrated social intervention programmes, funded jointly with the EU and NGOs, targeting in particular vulnerable communities at risk of radicalization. Such programs include surveillance of individuals deemed vulnerable and also provide proactive support to prevent them from engaging in extremist acts. Romania also has effective inter-institutional cooperation in dedicated structures, such as the National Group for Preventing and Combating Radicalization, which coordinates local authorities, the school system, security and civil society.

The experience gained in dealing with concrete cases of radicalization and recruitment, particularly in the context of the conflicts in Syria and Iraq, has allowed Romania to develop advanced and effective methods of reintegration and social and psychological rehabilitation of the persons concerned. These differences also highlight the need to tailor counter-terrorism prevention and counter-terrorism strategies to the specific resources and capabilities of each state, while strengthening regional and international cooperation to enable a coherent and effective response to this global threat.

Aspect analysed	Republic of Moldova	Romania
Financial and technical resources	Limited, dependent on international support	Relatively advanced, extended access to EU funds
Education and prevention programs	poorly developed, early stage	Developed and integrated into national strategies
Technology and operational capabilities	Limited infrastructure, outdated technologies	Modern infrastructure, access to EU and NATO technologies
Practical experience in deradicalization	Reduced	Extensive experience, multiple cases managed

Table No.1. Comparative conclusions on differences

7. *Bilateral and regional cooperation*. Terrorism and organized crime can be effectively prevented and combated through bilateral and regional cooperation between the Republic of Moldova and Romania. This strategic cooperation is implemented mainly through bilateral information exchange agreements, EU-funded projects and joint anti-terrorist exercises.

Agreements on information exchange between Republic of Moldova and Romania aim to make joint actions to prevent and combat terrorist threats and cross-border crime more effective. A concrete example of these new multilateral instruments is the Joint Protocol on Border Security, which allows for the rapid exchange of information between the customs and border authorities of the two nations. Through this protocol, the two sides exchange real-time data on the border crossing of persons suspected of terrorist activities, the illegal transportation of weapons or dangerous substances, and cases of

smuggling of people and goods suspected of terrorist networks. Practical implementation aspects are: the establishment of joint monitoring mechanisms; joint patrols and electronic data exchange, which help us to reduce the risks of illegal migration and smuggling. In this respect, the European Union is also encouraging cross-border cooperation between the two countries through large-scale projects, in particular through EUBAM (European Union Border Assistance Mission). Established in 2005, EUBAM assists Moldova and Ukraine in border management, combating cross-border crime and the risk of terrorism by training customs staff, equipping them with state-of-the-art equipment and developing common standardized procedures between Moldovan, Romanian and Ukrainian authorities. These achievements serve better border control, joint teams to detect and stop illegal actions and better regional security.

Joint anti-terrorist exercises are the other major pillar of Moldovan-Romanian cooperation. Such exercises are essential for validating rapid intervention strategies and procedures as applied to real crises. They include realistic simulations of terrorist attacks (including hostage-taking and cyber-attacks) and inter-institutional cooperation of special forces, police, intelligence, customs, customs, fire brigades and medical teams from both countries. The exercises are designed to identify operational shortcomings and improve contingency planning and emergency communications. The direct results are greater interoperability and rapid response capability, as well as confidence-building between the two countries' security apparatus.

Therefore, bilateral and regional cooperation between the Republic of Moldova and Romania is a *sine qua non* factor for regional security and adequate prevention against terrorist acts.

8. Recommendations for strengthening cooperation in the fight against terrorism between the Republic of Moldova, Romania and the EU. The following strategic and concrete measures are recommended to strengthen the effectiveness of preventing and combating terrorism in the Republic of Moldova and to support cooperation with Romania and the European Union:

8.1. Improving coordination between customs authorities. This measure aims to ensure effective and uniform control at the Moldovan-Romanian border, as well as to minimize the risks associated with the illegal transportation of weapons, dangerous materials and clandestine loading of terrorist suspects. In achieving these objectives, it is recommended:

– Development of a common operational database for the rapid exchange of information between customs and border authorities.

– Establishment and creation of permanent integrated customs points and joint operational control and monitoring actions.

– Organize regular joint training sessions for customs and border staff to standardize operational procedures and measures.

– Improving the technological infrastructure of customs points and equipping them with high-performance scanners for weapons and explosives detection, smart cameras and biometric sensors.

8.2. Public awareness campaigns against radicalization. To reduce the risk of radicalization, particularly among young people and vulnerable communities, it is recommended:

– Introducing mandatory educational programs in school and university curricula focused on preventing radicalization, promoting human rights, tolerance and critical thinking.

– Conduct awareness-raising campaigns in the media and online to explain the dangers of radicalization and to promote social cohesion and cultural integration.

– Active involvement of community and religious leaders in programs to prevent extremism and early identification of radicalization.

– Setting up a hotline and an online platform where citizens can anonymously report suspicious cases, while offering counselling and psychological support to vulnerable people.

8.3. *International support to modernize Moldova's justice system*. The objective of this measure is to increase the capacity of the Moldovan judiciary to effectively handle complex cases of terrorism and organized crime and to harmonize it with European and international standards. It is recommended:

– Initiation of EU funding and technical assistance projects, including the modernization of technical equipment, the implementation of state-of-the-art IT systems and the training of magistrates.

– Organize international training and exchange programs for Moldovan judges, prosecutors and lawyers in cooperation with Romania and other EU countries.

– Support reforms that strengthen the independence of the Moldovan judiciary through external monitoring and policy advice.

– The creation of specialized units within prosecutor's offices and courts dedicated exclusively to terrorism cases, with Romanian, EU and US support.

Expected results. These measures are expected to help improve border security, increase the population's resistance to radicalization and increase confidence in the Moldovan justice system. This will enable Moldova to participate actively in regional and international security. Romania and the Republic of Moldova face the important challenge of effectively combating terrorism, a complex and dynamic phenomenon, whose dynamics and evolution require differentiated approaches and tailored but coherently integrated responses, depending on the regional contexts and the international security architecture.

Conclusions and recommendations. Republic of Moldova has limited resources and structural vulnerabilities, particularly in the Transnistrian region, and needs to adopt a focused approach to strengthen the country's security infrastructure. This – together with the technical equipping of customs points, a significant investment in the institutional capacities of border and customs authorities and assistance for the effective control of trafficking in persons and arms (which poses a substantial terrorist risk) – is a key aspect of counter-terrorism cooperation.

As EU and NATO Member State, Romania has much better financial, technical and human resources at its disposal, which gives it the capacity to implement much more complex and in-depth measures. Thus, Romania emphasizes the need to prevent radicalization through well-designed educational programmes, building an advanced infrastructure for the interception and surveillance of terrorist actions and has extensive experience in the field of deradicalization and social reintegration of vulnerable people.

Both countries have put in place key international standards, transposing the provisions of UN Conventions and EU Directives on counter-terrorism into national legislation. This harmonization facilitates operational cooperation within international institutions such as Europol, Interpol, the UN and the OSCE. By integrating into these global structures, the two countries gain access to essential information for the prevention of

terrorist acts, financial and logistical support from international partners and advanced expertise in the field of preventing and combating extremism.

Bilateral cooperation between Romania and the Republic of Moldova continues to be essential for regional security, especially given the length of the common border, which requires effective control and prompt exchange of information. Joint projects supported by the European Union, such as the EUBAM mission, actively contribute to reducing vulnerabilities at the EU's external border. In addition, the conduct of joint practical anti-terrorist exercises also ensures the detection and elimination of operational shortcomings, as well as the enhancement of rapid interaction during real crisis events. This opportunity will require further investment in common technologies and continuous training of specialized personnel.

Romania's Criminal Code provides well-defined severe penalties for violent behaviour or attempts to intimidate, while Law No.535/2004 puts prevention and international cooperation at the forefront. The role of these acts in the fight against terrorism and maintaining public safety in Romania is thus very important.

The Criminal Code of the Republic of Moldova, in turn, describes terrorist offences in line with international standards and provides for severe penalties for organizing, financing and executing terrorist actions. The Moldovan law transposes EU Directive 2017/541 and allows for greater efficiency in combating international terrorist threats. Successful counterterrorism efforts currently undertaken by the two countries must be closely linked to and in turn take into account the specificities of each country, as well as the broader framework of a globally coordinated security effort against transnational terrorism and terrorist financing.

The framework for managing these threats is based on the bilateral cooperation between Romania and the Republic of Moldova, which is a key point for the effective management of these threats, but also a direct element for the stability and security of the region and Europe. The Republic of Moldova has critical vulnerabilities in the Transnistrian region and high risks in terms of trafficking in human beings and arms, which call for improved international cooperation and adequate strengthening of border control for limited use of national territory for terrorist purposes.

Despite the common interests of the Republic of Moldova and Romania in countering and combating terrorism, as well as the mutual interest in being part of the same security structures, there are significant differences in financial and technological capabilities, as well as experience in education and deradicalization programmes. Consequently, the Republic of Moldova needs to redirect its domestic resources, while benefiting from Romania's international cooperation and know-how. Moldovan-Romanian cooperation is strongly encouraged by the European Union and serves as an important bilateral commitment in support of regional security against terrorist threats and organized crime. Bilateral agreements, European projects such as EUBAM and joint anti-terrorist exercises play a decisive role in strengthening the institutional and operational capacity of the Republic of Moldova, directly contributing to the security of the EU's external borders.

The adoption of these measures would considerably enhance security in the Republic of Moldova, improve the effectiveness of regional cooperation in the fight against terrorism and contribute to the integration of Moldova's European and international security and justice mechanisms.

Final recommendations to strengthen security. In order to fight terrorism effec-

tively, Republic of Moldova and Romania must aim to increase operational coordination and accelerate the exchange of information at the border. Public awareness and education campaigns against radicalization need to be intensified, with the active involvement of local communities and civil society. In particular, the Republic of Moldova needs to access international support, in particular from the EU, to modernize the justice system, improve the operational capacities of the security institutions and strengthen the independence and efficiency of the judiciary.

Overall, by following these recommendations, both countries can contribute significantly to regional and international security.

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THE SUBJECT OF THE CRIME OF ILLICIT ENRICHMENT

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Summary

An essential condition for the application of criminal liability is the determination of the conditions required by the incriminating norm for the existence of criminal conduct. The article discusses the crime of illicit enrichment in the Republic of Moldova, which has supplemented the arsenal of tools in the fight against corruption in the public sector, inspired by the United Nations Convention against Corruption. It criminalizes the possession of assets of significant value in relation to the income earned, with penalties varying depending on the severity of the crime. However, there are criticisms and issues related to the application of this law, including conflicts with constitutional principles and difficulties in establishing the illicit nature of wealth. The article emphasizes the need to review the relevant norms to ensure efficiency and compatibility with the national legal system.

Keywords: offense, Penal Code, subject, possession, assets, criticisms, difficulties, revise.

Introduction. In recent decades, a close relationship has developed between corruption and unconsolidated democracies. Corruption reduces government revenues, increases the operating costs of the administration, raises government spending on salaries, and reduces operating and maintenance expenditures. At the same time, corruption diminishes public trust in government institutions, a crucial factor in the process of transitioning to democracy, thus affecting social relations regarding the proper conduct of public service activities, which constitutes the legal object of crimes in Chapter XV of the Criminal Code, namely 'Crimes against the proper functioning of public activity'.

By Law No.158 of July 6, 2007, the Parliament of the Republic of Moldova ratified the United Nations Convention Against Corruption, adopted in New York on October 31, 2003, and signed by the Republic of Moldova on September 28, 2004 [1].

This convention was justified, among other reasons, by the fact that illicit acquisition of personal wealth can be particularly harmful to democratic states, national economies, and the rule of law, as reflected in Article 20 of the Convention [2].

By ratifying the UN Convention against Corruption, the Republic of Moldova has agreed to seriously consider the possibility of criminalizing illicit enrichment.

Thus, on December 23, 2013, the Parliament of the Republic of Moldova adopted Law No.326 for the amendment and completion of certain legislative acts [3]. According to this law, the Criminal Code was supplemented with Article 330^2, titled 'Illicit Enrichment,' defined as the possession by a person in a position of responsibility or by a public official, either personally or through third parties, of assets whose value substantially exceeds the

means acquired, and where it has been established, based on evidence, that these assets could not have been lawfully obtained.

There are two typical types of crimes provided under Article 330² of the Criminal Code, namely: paragraph (1) "The possession by a person in a position of responsibility or by a public official, either personally or through third parties, of assets whose value substantially exceeds the means acquired, and where it has been established, based on evidence, that these assets could not have been lawfully obtained"; and paragraph (2), which aggravates criminal liability, stating that the same actions committed by a person holding a public office are punishable more severely [4].

It can be observed that the structure of the objective elements of the crimes provided in Article 330² CC of the Republic of Moldova does not differ, the only distinction being in the subject. The crime specified in paragraph (1) of Article 330² CC is committed by a person in a position of responsibility or by a public official, while the crime specified in paragraph (2) of Article 330² is committed by a person holding a public office. In both cases, the subject is special, and the penalties differ: the first type of crime is considered a serious offense, while the second type is regarded as an especially serious offense.

According to Article 21 of the Criminal Code, the subject of the crime is the person who commits a criminal act, meaning the individual who performs an action or omission that violates the criminal law. In criminal law, the subject of the crime is considered to be any person capable of criminal liability, meaning a person who has the necessary discernment to understand the illegal nature of the act committed and to take responsibility for their actions. Additionally, in order to be the subject of a crime, the person must be legally capable of criminal responsibility, which means they must be of legal age and not be in a condition that prevents them from understanding the nature of the act or from controlling it (e.g., minors or persons with severe mental disorders). The Criminal Code also establishes that the general age for criminal responsibility is 16 years, with some exceptions from the age of 14, but in the case of illicit enrichment, this age will always be higher, given the conditions of the special subject.

Depending on the manifestation of the objective element, the subject of the crime can be an active subject – the person who actually commits the crime (the perpetrator of the act) and who acts with the intention to perform an action in a specific way that ultimately fulfills the elements of the crime, and a passive subject – the person whose inaction fulfills the elements of the crime.

It is worth noting that in order to be considered a subject of the crime – a person must meet the conditions listed above. However, in the case of the crime of illicit enrichment, the subject, in addition to meeting the general conditions, must also fulfill specific conditions, namely those related to the activity they perform. All subjects of the crime of illicit enrichment must be employed, elected, or appointed to positions within public institutions at various levels.

Thus, according to Article 123 of the Criminal Code, as well as the provisions of Law No.158/2008 regarding public office and the status of public servants [5], and Law No.199/2010 regarding the status of persons holding public office [6], the subjects of the crime of illicit enrichment may include:

– A person in a position of responsibility, namely a person to whom, within an enterprise, institution, state organization, local public administration, or a subdivision thereof, certain rights and duties are granted, either permanently or temporarily, through legal

stipulation, appointment, election, or by virtue of a mandate, in order to exercise public authority functions or administrative, discretionary, or organizational-economic actions.

– A public person who is a public servant, including a public servant with special status (such as a diplomatic service officer, customs officer, or a member of the defense, national security, and public order agencies, or any person holding special or military ranks), an employee of autonomous public authorities or regulatory bodies, of state or municipal enterprises, of other legal entities under public law, or an employee in the offices of persons holding public office; a person authorized or invested by the state to provide public services on its behalf or to carry out activities of public interest.

– A person holding public office, namely a person whose appointment or election is regulated by the Constitution of the Republic of Moldova or who is vested in office through appointment or election by the Parliament, the President of the Republic of Moldova, or the Government, another person holding public office as established by law, as well as a person to whom a person holding public office has delegated their powers.

Thus, if the person meets the conditions of the subject, holding one of the positions listed, and based on the evidence, all the elements of the crime's composition are proven, then we are dealing with the commission of the crime of illicit enrichment.

The fact that public employees are subject to stricter ethical and legal norms is mainly due to their role in serving the public interest, ensuring transparency in public administration, and protecting state resources. In this context, any deviation from the law can undermine citizens' trust in public institutions and negatively affect the smooth functioning of the administration.

Thus, these provisions do not apply to individuals who are not employed within public institutions. Therefore, if the subject is not a public person and holds assets that substantially exceed their legal income, this crime composition cannot be charged against them, but must be classified under other provisions of the Criminal Code. However, no similar provisions exist for general subjects in criminal law, with certain provisions only being foreseen in the Civil Code, specifically in Chapter XXXII titled 'Unjustified Enrichment', consisting of 6 Sections and 19 Articles, which establishes the conditions for the existence of unjustified enrichment [7].

It is worth mentioning that in the provisions of the Civil Code, there is always the enriched person and the disadvantaged person, namely the one who has suffered the disadvantage due to the illicit enrichment obtained by another person. Also, the existence of a claim for reparations for the disadvantage is required as a mandatory condition for qualifying unjustified enrichment.

We see that in the case of the crime of illicit enrichment, there is no disadvantaged party making a claim. In the case of this crime, there is only a notification to the state authorities regarding the discrepancy between the public employee's income and expenses.

At the same time, there are certain phrases in the provisions of the article that complicate the work of law enforcement agencies, namely '...substantially exceeds...', '...could not have been lawfully obtained...', as well as the very title of the article 'illicit enrichment'. This requires law enforcement agencies to determine what constitutes a substantial excess, as well as the unlawful nature of the acquisition of assets, which should necessarily be preceded by a predicate crime, meaning a criminal act that occurred before the acquisition and possession of material goods, which in turn generated the illicit income.

It is worth mentioning that since the criminalization of this offense, the Republic of

Moldova has not achieved significant successes in criminal prosecution for such cases, given the legislative discrepancies that hinder the establishment of criminal liability for this crime.

Both theoretically and in practice, the compliance of the provisions with several constitutional and procedural criminal principles is questioned. A frequently raised argument is the non-compliance of the crime's composition with the principle of the presumption of the lawful acquisition of property, as stipulated in Article 46, paragraph (3) of the Constitution of the Republic of Moldova, which states that "legally acquired property cannot be confiscated. The lawful nature of acquisition is presumed".

Most of these concerns also refer to the fact that these regulations often impose an obligation on a person to provide evidence during the procedures. Those who contest the regulations regarding illicit enrichment have argued that such duties violate the presumption of innocence, remove a person's ability to remain silent during proceedings, and expose them to the risk of self-incrimination. Other concerns relate to the fact that some provisions regarding illicit enrichment may be applied retroactively and could be used to target assets acquired by a person even before the law came into effect.

Not only constitutional changes are essential, but also the improvements made to Article 330^2 of the Criminal Code. There are also issues related to the composition of the crime, which have been identified by both experts in the field and practitioners.

Since, for criminal liability for illicit enrichment to be engaged, it is necessary to prove the act that generates illicit assets, the crime of illicit enrichment cannot be treated separately. Based on the current wording of Article 330^2 CC, 'the possession of assets' is nothing more than the goal pursued through the crimes that generate illicit assets. In general, from any crime that generates illicit profit (assets/income), the perpetrator's goal is precisely to obtain and possess that profit.

By criminalizing illicit enrichment, under the current wording of the norms, the legislator punishes the same act twice, sanctioning the exhaustion of the primary crime that generates profit, with its consumption being sanctioned according to other articles (such as passive bribery).

The provisions of Article 330^2 of the Criminal Code, in their current wording, criminalize a secondary offense, which cannot be charged separately in the absence of a primary offense. Thus, if liability is to be engaged for both offenses, the perpetrator risks double punishment for the same act, which is incompatible with one of the fundamental principles of criminal procedure – non bis in idem – the prohibition of double punishment for the same act, as reflected in the Criminal Procedure Code [8].

Another issue lies in the notion of 'assets' in Article 330^2 of the Criminal Code. According to Article 132^1 of the Criminal Code, the term 'assets' refers to financial means, any category of values (assets) that are corporeal or incorporeal, movable or immovable, tangible or intangible, as well as deeds or other legal instruments in any form, including electronic or digital format, that attest to a title or right, including any share (interest) regarding these values (assets). As we can observe, the notion is exclusively applicable to Articles 106, 106^1, 243, and 279 of the Criminal Code, without being included in the crime of illicit enrichment.

The potential consequences of engaging liability for illicit enrichment are also controversial. According to Article 106^1 of the Criminal Code, if a person is convicted for committing crimes under, including, Article 330^2 CC, and if the act was committed for

material gain, the extended confiscation of assets is applied [9].

Extended confiscation is ordered if the following conditions are cumulatively met:

The value of the assets acquired by the convicted person within 5 years before and after the commission of the offense, up to the date of the sentence, substantially exceeds the income lawfully acquired by that person;

The court finds, based on the evidence presented in the case, that the respective assets result from criminal activities of the nature specified, including those criminalized under Article 330² of the Criminal Code.

Thus, the revision of the regulations regarding illicit enrichment should be carried out in conjunction with the revision of the regulations concerning the determination/confiscation of unjustified wealth, which has been subject to criticism, particularly from the perspective of Article 46, paragraph (4) of the Constitution.

Likewise, one of the fundamental principles of the Constitution, namely the principle of the presumption of innocence, states that the burden of proof lies with the prosecution, and doubtful situations are interpreted in favor of the accused (in dubio pro reo) [10].

It is worth mentioning that there are a number of issues related to the legal regulation of the crime of illicit enrichment in the Republic of Moldova. First of all, the statistics do not demonstrate the effectiveness of criminal prosecution in these cases, which raises questions about the effectiveness and usefulness of such a criminalization in this format.

Secondly, the current regulations are considered controversial and problematic by both scholars and practitioners, and the criminalization of illicit enrichment may lead to a double sanctioning of the perpetrator for the same act, which requires a fundamental revision of all related regulations. This revision should be carried out in conjunction with the revision of the regulations regarding the determination and confiscation of unjustified wealth.

Conclusions. As a personal conclusion, after the detailed analysis of the crime of illicit enrichment within the legal context of the Republic of Moldova, a still fragile normative framework emerges, affected by multiple conceptual and practical ambiguities. Although the legislator's intention to combat corruption in the public sector is legitimate and necessary, the way in which Article 330² of the Criminal Code is phrased leaves room for ambiguous interpretations, thus affecting its real efficiency and applicability. In particular, the limitation of the crime's subject to only public officials or persons in positions of public dignity raises questions regarding the fairness of the regulation, especially considering that illicit enrichment can also occur in other environments, including the private sector, without attracting the same criminal liability.

Furthermore, the necessity of proving the existence of a predicate crime to support the illicit nature of the wealth complicates the evidentiary process and makes the created legal instrument often inefficient in practice. This situation is further aggravated by the evident conflict with fundamental constitutional principles, such as the presumption of the lawful nature of property and the right to remain silent.

Based on these findings, not only a technical-legislative revision of the incriminating text is required, but also a strategic rethinking of the approach towards this crime. A possible reform direction would be to broaden the scope of the active subject of the crime, so that it includes any person who holds assets clearly disproportionate to their legal income, provided that there are clearly defined protective mechanisms against procedural

abuses. Such a reform would allow for equal treatment of all citizens before the law and would strengthen public trust in the criminal justice system, while maintaining a balance between the need to combat corruption and the respect for fundamental rights.

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COMPARATIVE ANALYSIS OF THE CRIMINAL LEGISLATION OF ESTONIA, LATVIA AND LITHUANIA ON CRIMES AGAINST AUTHORITY

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Summary

This article examines crimes against authority through the lens of criminal legislation in three states within a shared European geopolitical context: Estonia, Latvia, and Lithuania. The focus is on the mechanisms of criminal protection for "public authority" as a social value safeguarded by criminal law. The author explores the distinct approaches each country takes in regulating these crimes, highlighting key differences and similarities, as well as the specific challenges faced by the criminal laws of the Baltic States. Based on a comparative analysis of the three countries' legal frameworks, the article offers recommendations for enhancing national legislation, aligning it more closely with European Union standards. The study is also motivated by the steps the Republic of Moldova must take for EU integration, particularly in harmonizing its criminal legislation.

Keywords: crime, criminal legislation, legal framework, public authority, Baltic States, European standards.

Introduction. In European criminal law, the protection of public authority is a fundamental principle, essential for maintaining public order and safeguarding the integrity of state institutions. Crimes against authority are thus regulated by criminal provisions designed not only to protect public officials but also to defend public authorities and institutions that ensure the proper functioning of the state. In line with the principle of criminal sovereignty, each of the Baltic States – Estonia, Latvia, and Lithuania – has developed its own legal framework in this area. However, the shared legacy of the Soviet era and the influence of European legal standards have resulted in many similarities in their regulatory approaches.

The comparative analysis highlights both the normative, institutional, and sanctioning convergences and divergences in the protection of public authority, offering valuable insights for optimizing domestic regulations. In the current geopolitical context, characterized by regional instability and challenges to institutional authority, a comprehensive understanding of these regulations is essential for developing effective criminal policies and fostering a climate of order and respect for the law.

This study aims to examine these regulations from a comparative law perspective, analyzing the legislations of Estonia, Latvia, and Lithuania. By identifying both the similarities and significant differences, the study seeks to provide a deeper understanding of how each country protects public authority and maintains social order.

Methods and materials applied. The primary research method employed in this study is the *comparative method*, focusing on a detailed analysis of criminal regulations

within the criminal legislation of Estonia, Latvia, and Lithuania. In addition to the comparative approach, the study also utilizes the following methods: the *logical-legal method*, which involves analyzing relevant texts in the criminal legislation of each of the Baltic states concerning crimes targeting public authority; the *doctrinal method*, which facilitates the review of specialized literature, including studies and academic works on crimes against authority in the Baltic states; and the *systematic analysis*, which helps identify the influences of European law on the regulation of these crimes and highlights recent trends in the field of criminal law.

Discussions and results obtained. **Estonian criminal law on crimes against authority**. Estonia, as a Member State of the European Union and the Council of Europe, has developed its criminal legislation based on the principles of fundamental human rights and the protection of public order. The Estonian Criminal Code, adopted in 2001 and later amended, regulates crimes against public authority in a detailed and structured manner, taking a relatively strict approach to acts of violence and administrative sabotage. These offences include:

Acts of violence committed against bodies exercising State Authority (*Article 274*). This provision of the Estonian Criminal Code criminalizes the act of physically assaulting or otherwise using violence against individuals exercising state authority. The offense is punishable by up to five years of imprisonment. For the act to constitute an offense under Article 274, it must be committed during the performance of the victim's official duties. The law explicitly identifies the passive subject as a "body exercising authority", which implies that the offense may be committed against any natural person acting in an official capacity on behalf of the state. Aside from the requirement that the act occur during the execution of official functions, the provision does not impose additional conditions regarding the normative content of the offense. Notably, Estonian law also allows for legal persons to be held criminally liable for committing this offense, reflecting a broader framework of accountability within the criminal justice system.

Moral assault and defamation of State Authorities (*Articles 275 and 275*[1]). Moral assault expressed through insult and defamation through slander are criminalized under Articles 275 and 275[1] of the Estonian Criminal Code respectively. The first provision (Article 275) addresses the offense of insulting a person exercising state authority, while the second (Article 275[1]) criminalizes slandering such individuals. In both cases, it is a necessary condition that the targeted authority figure is acting in an official capacity at the time of the offense. Both natural and legal persons may be held criminally liable for committing these offenses, reflecting Estonia's commitment to protecting public authority and maintaining respect for state institutions. As noted in Zoltan J. Toth's work "The Regulation of Defamation and Insult in Europe", between 2009 and 2013, Estonian authorities initiated between 161 and 290 criminal proceedings annually for defamation or insult directed at representatives of state authority or other individuals responsible for maintaining public order. This statistics demonstrate the active enforcement of these legal provisions in Estonian judicial practice [1].

Unlawful wearing of the uniform or distinctive signs of a Public Authority (*Article 277*). The criminalization of the unlawful wearing of official uniforms or distinctive signs under Article 277 of the Estonian Criminal Code serves to protect both public authority and citizens' trust in state institutions. Unauthorized use of such insignia can erode the perceived legitimacy of public officials, potentially enabling abuse of power or fraudulent

activity. This provision reflects the importance of preserving the integrity of state symbols and the authority they represent. According to paragraph (2) of the same article, the court may also order the confiscation of any items used in the commission of the offense. Additionally, the Estonian Penal Code extends criminal liability to acts of defamation or insult against persons enjoying international immunity, including their family members, under Article 247. Such offenses are punishable by a fine or imprisonment for up to two years, underscoring Estonia's commitment to upholding diplomatic norms and international legal standards.

False Emergency Calls (*Article 278*). Under Article 278 of the Estonian Criminal Code, it is a criminal offense to knowingly make false calls to emergency services – such as the police, rescue teams, or ambulance services – or to deliberately request the intervention of an emergency response unit without justification. This includes the intentional summoning of vehicles or personnel under false pretenses [2]. The Estonian legislator views such acts as a serious threat to the proper functioning of public authorities. False emergency calls not only waste valuable resources but also undermine public trust and disrupt the operational efficiency of emergency services. By diverting attention from real emergencies, these acts can delay responses to actual crises, potentially endangering lives and public safety. The offense thus protects the integrity and reliability of emergency response systems, which are essential to maintaining public order and security.

Obstruction of the Exercise of State Supervision (*Article 279*). This offense consists of the intentional actions of a person preventing or obstructing supervision carried out by a public official within the scope of their legal authority. This may include refusing access to premises or information, concealing evidence, or hindering official inspections or verifications [2].

Latvian criminal legislation on crimes against authority. Latvia, as another Baltic State with a legal system grounded in the principles of European law, regulates offenses against authority in a manner that balances the protection of public order with the safeguarding of fundamental human rights. The Latvian Criminal Code, particularly in Chapter XXII, sets out provisions for the following offenses against authority:

Assault on a Public Official or other State Official (*Article 269*). This offense involves physically assaulting a public official or another state official, including individuals involved in the prevention or cessation of a crime or other unlawful act. It is punishable by imprisonment for up to five years or alternatively by imprisonment for a shorter term, community service, or a fine. In response to emerging threats and crises, including issues related to border security and declared states of emergency, legislative efforts are underway to strengthen the penalties for assaults on public officials. These amendments aim to enhance legal protections for state representatives, particularly in situations that threaten the inviolability of the national border [3].

Resistance to a representative of Public Authority or other State Official (*Article 270*). This offense involves resisting a "*representative of public authority*" or another "*state official*" in the performance of their official duties. It also applies to acts of resistance against a "person participating in the prevention or interruption of a crime or other illegal act", or to coercing such individuals into carrying out manifestly illegal actions – provided that the resistance or coercion is committed through violence or the threat of violence [4].

Appropriation of the Title and Authority of a Public Official (*Article 273*). This crime involves the unauthorized and illegal assumption of the title and authority of a state official. For the offense to be established, it is not only necessary for the perpetrator to falsely

claim the title and authority of an official, but there must also be a specific intent: namely, the purpose of committing another crime by usurping the official capacity. The specialized intent behind this crime serves two purposes: first, it highlights the seriousness of usurping an official capacity, and second, it influences the legal classification of the act, particularly in relation to the rules governing the competition of crimes.

Theft and Destruction of a Document, Seal, or Stamp (Article 274 of the Criminal Code). Theft and destruction of official documents, seals, or stamps is another offense against authority outlined in Latvian criminal law. According to the law, anyone who voluntarily steals, conceals, destroys, or damages a document that confers rights or exempts from obligations, or a seal or stamp, or who uses or sells a stolen document, seal, or stamp, is punishable by imprisonment for up to one year. Alternatively, the offender may face temporary deprivation of liberty, community service, or a fine [4].

According to a detailed analysis by author Jānis Rozenbergs in his work "*On some developments in Latvian Criminal Law and Criminal Procedure*", presented at the ECBA conference in Geneva in 2012, offenses against public authority are taken very seriously in Latvian legislation. Recent legislative amendments have focused on enhancing the protection of public officials against acts of violence and intimidation. Rozenbergs emphasizes that these legislative measures are crucial for maintaining public trust in state institutions and ensuring the effective functioning of public administration [5]. Additionally, in "*Criminal Law Policy of Latvia in the context of the European Union*", the authors examine how Latvia's criminal policy aligns with European standards, underscoring the importance of protecting civil servants within the framework of European integration and international cooperation in criminal justice [6].

Lithuanian criminal legislation on crimes against authority. The Lithuanian Criminal Code adopted in 2000 and periodically revised to reflect social, political, and economic changes, regulates offenses against public authority in a detailed and nuanced manner. These offenses are primarily covered under Chapter XLI, titled "Crimes and Misdemeanors against the Activities of Public Service or against a Person Performing Public Administration Functions". In this context, offenses against authority encompass both physical and verbal attacks on public officials, offenses that disrupt public order, as well as behaviours that undermine the functioning of national and local authorities. Through a balanced approach, Lithuania's criminal legislation seeks to protect both public authority and the rights of citizens.

In this context, we can identify the following categories of offenses against public authorities as outlined in Lithuanian criminal legislation:

Resistance against a Public Official or a Person Performing Public Administration Functions. This offense, described in Article 286 of the Lithuanian Penal Code, involves an individual who, through the use of physical violence or the threat of immediate physical violence, opposes a public official or another person performing public administration functions. The secondary passive subject of the offense can be any natural person who holds the status of either a "public official" or a "person performing public administration functions". In line with the approach of most European legislations, the Lithuanian legislator clarifies these terms through legal definitions. The defining norm is found in Chapter XXXIII, "Offenses and Misdemeanors against the Civil Service and the Public Interest", specifically in Article 230, which provides the "Meaning of Terms" [7].

Threatening a Public Official or a Person Performing Public Administration Functions.

This offense is outlined in Article 287 of the Lithuanian Criminal Code. In its typical form, the crime involves the perpetrator applying "mental coercion" to a public official or a person performing public administration functions, forcing them to perform or refrain from actions that benefit the perpetrator or others [7]. The legislator does not provide a specific definition for the term "moral coercion", implying that it can take various forms. It may include threats of violence, as well as other forms of threat, such as the disclosure of defamatory information, threats to destroy property, or other coercive tactics.

Insulting a Civil Servant or a Person Performing Public Administration Functions. This offense was initially outlined in Article 290 of the Lithuanian Criminal Code, which criminalized the act of insulting a civil servant or a person performing public administration functions during the exercise of their official duties. The law did not impose additional conditions beyond the requirement that the victim be engaged in their official duties at the time of the insult. The offense was punishable by a fine, arrest, or imprisonment for up to two years. However, in 2015, the Lithuanian Parliament repealed Article 290 as part of a legislative reform aimed at aligning national law with international standards on freedom of expression [8]. This reform was supported by organizations such as *the International Press Institute*, which argued that criminalizing insults against public officials could infringe on freedom of expression and lead to potential abuse [9].

Interference with the activity of a Public Official or a Person Performing Public Administration Functions. This offense is described in Article 288 of the Lithuanian Criminal Code and involves the act of a public official or a representative of a political or public organization who, using his influence, interferes with the activities of a public official or a person performing public administration functions. The aim of this interference is to compel the official to refrain from lawful actions or to carry out illegal actions, either for the perpetrator's benefit or for the benefit of others.

Conclusions. Following the comparative analysis of the criminal legislations of Estonia, Latvia, and Lithuania regarding crimes against public authority, we can observe both similarities and significant differences that reflect the distinct historical, cultural, and social developments of each country. Clearly, all three Baltic States recognize the protection of public authorities and public order as fundamental elements of a democratic rule of law. However, each country has adopted regulations tailored to its own national specificities and legal context.

The criminal regulations of Estonia, Latvia, and Lithuania present a cohesive structure in defining and protecting public authority against hostile actions. The differences primarily manifest at the level of legislative technique: Estonia tends to adopt a broader typification of the norms, while Latvia prefers more concise, yet inclusive, norms. Lithuania distinguishes itself with an integrative approach, emphasizing the protection of officials within the context of their exercise of public authority. Overall, the criminal systems of the Baltic States demonstrate a trend toward doctrinal and normative harmonization, driven by their adherence to European standards in criminal law.

A common feature of the criminal laws of Estonia, Latvia, and Lithuania is the strong emphasis on protecting public authorities. All three countries have introduced clear regulations to safeguard public officials from physical violence, cyberattacks, and any acts of resistance against legal authorities. Notably, physical violence against police officers or other state agents is met with severe sanctions, and the penalties for such offenses are significant, reflecting a regional consensus on the importance of protecting state authority.

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THE IMPACT OF THE DEVELOPMENT OF DEVIANT AND DELIQUINTIVE BEHAVIOR ON THE INCREASE OF CRIME IN SOCIETY

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Summary

Deviant and delinquent behaviors are instances of social phenomena that directly affect the level of crime in society. A big problem is that the accumulation of signs of abnormal behavior among certain groups of the population creates favorable conditions for the formation of criminal subcultures, which contributes to the growth of crime. Research into the mechanisms of development and relationship between deviant and delinquent behavior allows us to identify the main factors that provoke deviations, including social disintegration, low levels of education, family dysfunction, and economic instability. Of particular note is the influence of adolescence, when a person`s value orientations are formed, and an unstable social environment can contribute to the consolidation of deviant behavior patterns. The lack of proper control by the family and educational institutions, the influence of media, as well as criminal groups, increase the risk of youth involvement in illegal activities.

Keywords: deviant behavior, delinquent behavior, criminality, crime prevention, social norms, society.

Introduction. Deviant behavior is conduct that does not comply with moral norms. It differs from criminal behavior in that it does not violate legal norms, and from abnormal behavior in that it is observed in mentally healthy children. The most common manifestations of such behavior are the lack of positive interests, negativism, indiscipline, conflict, aggressiveness, etc. [14, p.22].

Delinquency is a psychological predisposition to offenses, which manifests itself in the systematic commission of asocial actions [4, p.50].

In criminology, delinquent behavior is defined as offenses characteristic of young people aged 12 to 20. Since this age covers the period of preparation for military service (16-18 years) and its completion (18-27 years), most often manifestations of delinquent behavior are observed among young people of draft age. Unlike deviant behavior, delinquent behavior is characterized by repeated asocial acts that form a stable pattern of behavior and violate legal norms. However, such behavior does not always lead to criminal liability due to its relatively low social danger or the insufficient age of the offender, which excludes the possibility of bringing him to justice [2, p.6].

Thus, the difference between delinquent and criminal behavior is determined by the possibility of applying criminal punishment. Behavior that is not approved by society is called deviant, and that which contradicts the law is called delinquent. However, social disapproval does not always entail punishment [5, p.178].

Methods and materials applied. Theoretical material was used in the development of this publication: logical method, method of comparative analysis, systemic analysis, etc.

Discussions and results obtained. To understand the mechanism and stages of

transformation of negative behavioral manifestations into deviation, it is important to consider the influence of pedagogical neglect and difficulties in raising children as a psychological and pedagogical problem. Pedagogically neglected children are considered to be those who, being in unfavorable social, psychological and pedagogical conditions, have formed a negative attitude towards learning and socially significant norms of behavior. They lose a sense of responsibility for their actions, lose faith in themselves and demonstrate asocial tendencies [11, p.107].

There is a classical classification of types of deviant behavior, proposed by R. Merton, a representative of the sociological approach. He distinguished the following types of deviations:

– *Conformism*: full acceptance of social goals and methods of achieving them;

– *Innovation*: recognition of social goals, but the use of unconventional or illegal methods to achieve them (for example, racketeering, theft, fraud);

– *Ritualism*: denial of social values and norms while adhering to established rules and traditional methods of achieving goals;

– *Escapism*: evasion or escape from social reality (manifested in the forms of anarchy, drug addiction, vagrancy, etc.);

– *Rebellion*: complete rejection of existing social norms, values, and methods of their implementation with an active desire to replace them with new ones (for example, terrorism, radicalism) [10, p.272].

According to S. Zinchenko, the formation of deviant behavior is due to the interaction of biological and environmental factors. Among the *biological risk factors* are:

– *Genetic risk*. Despite the fact that the direct transmission of deviant behavior through genes has not been proven, researchers suggest the possible inheritance of constitutional and typological features;

– *Hormonal factors*. Increased levels of androgens in adolescent boys may be associated with aggressive behavior;

– *Neurochemical and neurophysiological factors*.

Social stress factors include:

– Family problems (parental mental illness, alcoholism, drug addiction, constant conflicts, cruelty and neglect of the child, impulsive-aggressive parenting style);

– The influence of a small reference group, especially with asocial behavior models;

– The influence of immoral and violent content from the media or television;

– Economic difficulties and problems with employment.

Modern youth often faces the need to determine a life strategy and build a future, which includes choosing a lifestyle, main goals and directions of development. However, for a significant part of young people, illegal and asocial behavior becomes normal within their age environment. This indicates the institutionalization of deviation, that is, its gradual perception as a socially acceptable type of behavior [6, p.82-83].

A well-known researcher in the field of typology of deviant behavior A. Litchko identifies two main areas of classification of violations: by the form of manifestation and by the reasons underlying them. The first include delinquent behavior, running away from home and vagrancy, early use of alcohol and toxic substances, sexual deviations and suicidal behavior. The second include genetic factors, organic brain lesions, developmental features associated with acceleration and infantilism, as well as socio-psychological factors, among which the influence of the social environment and the specifics of adoles-

cence play a special role. Delinquent behavior includes various types of offenses that are not subject to criminal liability, but provide for administrative penalties. Such offenses include petty hooliganism, bullying of younger or weaker people, theft of bicycles and motorcycles, fraud and petty theft. Also, delinquent manifestations include violations of discipline, such as truancy and disruption of lessons, as well as antisocial actions, in particular, violations of public order and hooliganism. According to A. Lychko, the tendency to delinquent behavior is associated not only with the severity of certain characterological anomalies, but also with their type. In particular, studies show that among adolescents with psychopathy, delinquent behavior occurs in 49% of cases, especially often with unstable psychopathy and some accentuations of character.

As noted by E. Reznikova and P. Elkind, juvenile delinquents have certain socio-psychological characteristics, including lack of experience in moral behavior, distorted or primitive understanding of social values, inadequate self-esteem (both understated and overstated), distorted attitude towards moral and legal norms (immoral acts are perceived as normal), increased susceptibility to the influence of the environment due to insufficient social experience. Running away from home and vagrancy are considered one of the forms of deviant behavior.

The main reasons for this phenomenon are the desire to satisfy one's own needs and seek new impressions, a protest reaction to strict requirements or lack of attention in the family, anxiety or fear of punishment, as well as a romanticized idea of travel and freedom of communication in informal groups. Regular use of alcohol, toxic substances (inhalants, medications) and soft drugs in adolescence is often associated with group mental dependence, which is formed in unstable companies. Adolescents with unstable (45%), epileptoid (35%), hysterical (28%), hyperthymic and hyperthymic-unstable (26%) character types are especially prone to this type of behavior. A significant part of offenses among adolescents is committed in a state of alcoholic, toxic or drug intoxication. Deviations in sexual behavior are often associated with adolescent hypersexuality, but are usually temporary and caused by specific situations. These include masturbation, petting, early sexual initiation, casual sexual relationships, transient homosexuality, sexual disinhibition, and aggressive-sadistic tendencies. Suicidal behavior most often manifests itself in adolescence and includes suicidal thoughts, intentions, statements, threats, or suicide attempts. Several types of such behavior are distinguished in the psychological literature. Demonstrative suicidal behavior is used to attract attention and is more common in individuals with hysterical accentuation. Affective suicidal behavior occurs in a state of emotional tension, at the peak of affect. True suicidal behavior is a deliberate, carefully planned, and often implemented intention to end one's life by suicide, which is more common among individuals with schizoid accentuation [13, p.46].

Also quite widespread are the risk factors for the emergence of deviant behavior, which include:

• *Socio-economic*: a decrease in the standard of living of the population, property stratification of society, limited opportunities for legal earnings, unemployment, availability of alcohol and tobacco.

• *Socio-pedagogical*: a crisis of the family institution, an increase in the number of families with a conflict style of upbringing, problems in learning, conflicts with teachers, low social status of the individual.

• *Socio-cultural*: a decrease in moral and ethical standards, the spread of a criminal

subculture, the destruction of spiritual values, the growth of informal groups dominated by the cult of power.

• *Psychological*: accentuation of character, a reaction to emancipation, a tendency to group, a desire for self-affirmation, a desire to look like an adult, satisfaction of curiosity, the need to change the mental state in stressful situations, infantility, increased anxiety.

• *Biological*: disruption of the enzymatic and hormonal systems, congenital psychopathies, minimal brain dysfunctions due to organic brain damage, hereditary factors, environmental influences [15, p. 488-489].

According to the prominent psychologist E. Erikson, the role of the family in the formation of a child's personality is extremely important at the initial stage of socialization. At the first stage (up to 1 year), the child's development occurs on the axis of "trust-mistrust". At the second stage (1-3 years), the child develops on the axis of "autonomy – shame and doubt". Here the ability to self-control is formed, a balance is established between stubbornness and voluntariness of actions. Erikson interprets the experience of shame as a feeling of self-loathing that arises when a child is not allowed to be independent, when parents constantly do everything for them or expect them to act in a way that they are unable to do themselves. As a result, the child may develop self-doubt and insufficient development of the emotional-volitional sphere [1, p.13].

Delinquent behavior begins to manifest itself later than deviant behavior. It begins to grow rapidly in children of primary school age and has its own characteristics and causes. Usually, such behavior is an emotional reaction to difficult life situations. It can also be the result of negative environmental influences, in particular peers or the media. The causes of delinquent behavior in primary school age are diverse. Socio-economic factors can lead to such manifestations, as they create conditions in which children feel deprived and unprotected. Children from disadvantaged families often face a lack of material goods, love and support from their parents, which can contribute to their tendency to engage in delinquent behavior in order to attract attention or get what they lack. Psychological factors can also cause such behavior, making it difficult for children to adapt to social norms and standards. Children with psychological problems may have difficulties with emotional self-control, self-regulation, constructive ways of resolving conflicts and making optimal decisions. The influence of a destructive social environment can form negative values and asocial attitudes in children, which also leads to delinquent behavior [9, p.273-274].

Delinquent behavior is a set of offenses and offenses that are not subject to criminal liability, but with their behavior the child assumes the status of a "difficult teenager". L. Mishchyk and Z. Belousova distinguish the following characteristic features of a "difficult teenager":

1. Intellectual retardation: insufficient development or selective perception and assessment of the environment, weak cognitive abilities, undeveloped speech.

2. Negative character traits: irresponsibility, laziness, the presence of bad habits, indifference, cruelty to people, animals or nature.

3. Conflict: frequent disputes with peers, parents and teachers.

4. Propensity for forbidden entertainment: interest in activities that do not correspond to age, in the absence of interest in socially useful activities.

5. Impulsivity: inability to control emotions in a state of strong excitement.

6. Protective psychological mechanisms: justification of one's own behavior, tendency to deception, aggressiveness.

7. Negative ways of self-affirmation: manifestation of deviant behavior as a way of self-expression [8, p.153].

K. Sedykh and V. Morgun highlight the main features of delinquent behavior:

1. Violation of the law: includes any actions that contradict the law or established rules, including theft, robbery, assault, drug offenses, etc.

2. Deviation from social norms: behavior that contradicts generally accepted social rules, for example, aggression, vandalism, drinking alcohol in public places.

3. Failure to comply with established rules in the educational or work environment, such manifestations as: truancy, bullying, physical violence, refusal to comply with school or work rules.

4. Antisocial actions that harm society or individuals, including violence, theft, intentional murder, etc. It is worth noting that delinquent behavior can have different levels of seriousness [7, p.17].

In turn, Kateryna Duvanska highlights a separate factor – the criminal factor of the emergence of delinquent behavior. One of the reasons for the formation of delinquent behavior is teenage groups that arise outside the boundaries of socially significant activities. Such associations are often formed in conditions of aimless pastime and risky hooligan acts. Getting into such an environment, a teenager gradually becomes involved in antisocial actions that can develop into criminal activity. The main factors contributing to this process are failures in achieving success, the lack of positive activities for self-realization, as well as psychological discomfort. The latter can arise due to a feeling of social alienation, low academic performance, conflicts with teachers and peers. As a result, the teenager loses significance in his usual environment and begins to look for a new circle of communication, which often leads to involvement in deviant or criminal groups [3, p.160].

I. Zhdanova in her study notes that people with various forms of deviant behavior have violations of the mental mechanisms responsible for self-regulation. One of the key factors contributing to deviation is a contradictory attitude to social norms and rules, as a result of which they lose their regulatory function. Also, an important role is played by the insufficient development of the mechanisms of style regulation, which is manifested in the weak ability to identify important conditions for achieving goals, build an effective strategy of actions, adapt the self-control system to changes in the external and internal environment, objectively evaluate one's own behavior and results of activity, as well as in the lack of independence in organizing one's own activity. In addition, people with deviant behavior are characterized by increased tension in confrontational situations, which is accompanied by a reduced level of self-control, responsibility and difficulties in positively rethinking difficult life circumstances [12, p.203].

Deviant behavior and criminal behavior have a close and complex relationship that requires consideration from several aspects. Most importantly, there is a certain sequence between them, where deviant behavior is not only a deviation from social norms, but also a potential catalyst for further offenses. This means that deviant actions do not always lead to criminal ones, but they are often the initial stage on the path to criminal activity.

One of the main mechanisms linking deviant and criminal behavior is psychological factors. People who demonstrate deviant behavior often have problems with adapting to social norms and with self-regulation. They may have a deficit in social skills, are unable to adequately evaluate moral norms and control their impulses, which significantly increases the likelihood that their behavior will become more disturbed and lead to crimes.

Additional factors are personality accentuations, psychopathic or psychopath-like traits, which significantly increase the tendency to violate the law. Another important aspect is social marginalization, which is often the result of deviant behavior. Individuals who demonstrate deviations from social norms often find themselves on the periphery of society, isolated from mainstream social groups. They can be rejected from various social institutions, such as family, school, work, and this creates a favorable environment for the development of criminal behavior. Alienation from society can worsen a person's psychological state, which further increases the likelihood of committing crimes. This is especially true for adolescents and young people, when the influence of peers and groups becomes critically important. In such cases, the lack of support from the family or society, based on accepted moral norms, makes the individual vulnerable to criminal influences. Additionally, individuals who are prone to deviant behavior often find themselves in social circles where antisocial and illegal actions are normalized. Such groups support each other in violating norms and rules, stimulating even greater deviation from societal standards.

In such groups, individuals may not only encourage crime, but also be constantly influenced by criminal ideas and patterns of behavior, which can ultimately lead to the commission of serious crimes. Understanding these connections is important for developing effective strategies for preventing and combating crime [16].

Conclusions. Preventing the growth of crime requires a comprehensive approach that includes legal, educational and social ways to solve the problem. The implementation of social rehabilitation programs, increasing legal awareness and creating favorable conditions for the socialization of risk groups of the population should contribute to a significant reduction in the level of crime. The leading approach to this problem is an interdisciplinary approach that combines the efforts of criminologists, psychologists, sociologists, and educators in combating the spread of deviant and delinquent behavior in society.

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CONDITIONS AND PARTICULARITIES OF THE PREPARATION OF PROCEDURAL ACTS AT THE DETENTION OF PERSONS SUSPECTED OF COMMITTING CRIMES

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Summary

The application of coercive measures in the criminal trial is necessary for the prevention, cessation, investigation and discovery of crimes. Among them, the detention of a person suspected of committing a crime should be highlighted – the measure that limits the personal freedom of citizens. Its application substantially restricts the constitutional rights, freedoms and legal interests of the citizen, calls into question their honor and dignity, influences their future fate and causes moral suffering in the event of unjustified or illegal detention. The detention of persons suspected of committing crimes is often accompanied by significant difficulties, which is explained by its insufficient legal regulation. The recognition of international standards in the field of human rights implies the need to search for new approaches to optimizing the forms of criminal proceedings, creating additional guarantees for the inviolability of the person related to the application of criminal procedural coercive measures. Therefore, one of the current directions in the theory of criminal procedure was and remains the development of legal regulations on the application of this criminal procedural coercive measure and the appropriate preparation of procedural acts in the process of detention of persons suspected of committing crimes.

Keywords: suspect, detention, deprivation of liberty, reasonable grounds, criminal prosecution action, ordinance, body search, procedural act, offense, defense attorney, criminal prosecution body, rights, obligations, interrogation.

Introduction. Detention, as a concept, has several meanings, being considered as: an action; a procedural solution; a state. Detention as an action means stopping, preventing a person from moving according to own will. It is, therefore, physical detention (*de facto* detention). Detention as a measure means the solution or the procedural decision by which the coercive measure consisting in depriving a person of liberty for a short period of time, but not more than 72 hours, in the places and under the conditions established by law is ordered. Detention as a state refers to the person deprived of liberty and who is in the custody of the law enforcement agencies. The person is 'detained' or 'in a state of detention' [6, pp.49-51].

In general, detention is a procedural measure of coercion applied within a criminal case and which manifests itself through the temporary isolation from society of the person suspected (accused) of committing a crime by keeping the person in question in specialized institutions for a period strictly established by law [17, p.59].

In the specialized literature (forensic science and criminal procedure law) the detention of the suspect (accused) is usually excluded from the process of conducting criminal prosecution actions, carried out by law enforcement agencies when investigating criminal cases. In the opinion of professor M. Gheorghiță, this fact speaks of the necessity

it be considered an independent procedural and forensic tactic action with a special value. He supports the opinion of those authors who classify the detention of the suspect (accused) to criminal prosecution actions and characterize it as a procedural measure of coercion, which also has the purpose of administering evidence in the criminal case [8, p.412; 17, p.119]. In the opinion of other authors, detention is a complex procedural action. Its complexity is manifested in the fact that it is closely related to certain criminal prosecution actions, such as frisking and body search. In essence, the content of this action includes a preliminary body search at the place of detention, a body search within the premises of the criminal prosecution body, escorting the detainee and the investigation (examination) of the place where the detention took place, the results of which are reflected in the detention report [12, p.277; 24, p.152].

Art. 25 of the Constitution of the Republic of Moldova [4], contains the basic elements for determining the legality of the act depriving an individual of his/her liberty [13, p.119]. According to the case law of the ECtHR, detention as a form of deprivation of liberty begins when the person is effectively ordered to surrender his/her freedom of movement and is not limited to the classic notion of arrest or detention. Thus, the purpose of protection, provided for in Article 5 of the ECHR [5], goes beyond the simple deprivation of liberty in the classic sense of the word and does not exclusively cover the physical deprivation of liberty through detention [9; 16, p.298].

In the case of *Creangă vs. Romania* [11], the ECtHR found that the prior waiting of a summoned person, before being officially detained, was not included in the term of detention. Any procedural measure that requires time, such as, for example, a home search; the crime scene investigation in the case of crimes committed in *flagrante delicto* must be included in the 72 hour period.

The detention period must include the time spent performing the procedural measures immediately preceding the execution of the act of detention, in the event that the person is effectively constrained in the freedom of movement during the performance of these measures, which in fact constitutes deprivation of liberty *lato sensu* [15, p.111].

In order for the detention to be legal, it is necessary to cumulatively meet a series of general and special conditions provided for by law, which are considered procedural guarantees to ensure the individual freedom of the person [7, p.346]. In this regard, the preparation of the detention report has a special procedural importance, because based on the respective act the person obtains the procedural status of a suspect who has certain rights and obligations and constitutes the procedural reflection of both the decision and the detention procedure [15, pp.111-112].

The report of the suspect's detention, drawn up in the manner established by law, is an important procedural document, which represents not only the legal basis for the correction of the detainee and his/her detention in the preventive detention center, but also an important means of evidence in the criminal case [8, p.435].

Methods and materials applied. The methodological basis of the article is the principles of dialectical materialism, as a universal method of knowledge. In the work process, general scientific methods were applied: comparative-legal, systemic, logical, and grammatical. In the development of the article, provisions of the Constitution of the Republic of Moldova, international legal instruments, provisions of the criminal procedural legislation of the Republic of Moldova in the matter of the detention of the suspect as a measure of criminal procedural coercion, as well as provisions of the criminal procedural legislation

of other states were used. The theoretical basis of the research is the works of scholars in the field of criminal procedural law and forensics. The research also used works on the methodology of scientific knowledge, as well as a range of studies and researches signed by foreign authors.

Discussions and results obtained. The representative of the criminal prosecution body by drawing up a report on the detention of the suspect, seriously limits one of the fundamental rights of the citizen – the right to the inviolability of the person. This right, guaranteed by the Constitution of the Republic of Moldova [4], applies equally to any citizen of the Republic of Moldova throughout its territory, and any restriction of this right can be carried out only in accordance with the procedures established by law. The main purpose of the drawn up procedural act is that it exclusively formulates the decision on the application of a procedural coercive measure to a person and certifies that this decision has been implemented.

However, another important task of this act, which is relevant today, is to strengthen the procedural position of the person, and this is usually achieved indirectly. In practice, this aspect is often not given due attention. At the same time, the detained person is not always aware of the legal significance of this document and of getting acquainted with it. However, the detention report, as a procedural act, does not guarantee the 'materialization' of the most important circumstances, from the point of view of evidence in criminal cases, such as, for example, in the case of catching a person in *flagrante delicto* and actual detention at the scene of the crime.

In most cases, due to the presence of this procedural act in the criminal case, it can be practically found out whether (and to what extent) the procedural form was respected. In addition, the necessary conditions are created to ensure the process of proving the suspect's involvement in the commission of the crime, timely control by the prosecutor, judicial control over the legality and reasonableness of the detention is ensured, the accuracy of the transmission of factual data is guaranteed [25, p.93].

The development of practice has led to the fact that the detention report, which should certify the circumstances and facts established at the time of detention, has become, among other things, the documentary basis for the deprivation of liberty of the suspect for a short period of time, which, to a large extent, limits the possibility of using this document to record the circumstances of the detention of the person suspected of committing the crime. Thus, I.M. Gutkin emphasized that "the specific statement of the grounds for detention in the report is not related to its evidentiary value, but to the need to justify the decision to detain a person suspected of committing a crime" [20, p.50].

Several authors considered that the detention report is evidence in the case file, which is why it must be drawn up in accordance with all the requirements established by the legislator. Deficiencies in its preparation nullify its evidentiary value and create additional obstacles in establishing the truth in the criminal case [29, p.60; 31, p.60].

According to the position of some authors, the detention report was considered for a long time, an independent item of evidence, being classified as the minutes of criminal prosecution actions. B.P. Smagorinsky emphasized that "the detention report provides the criminal prosecution body, on the one hand, with indisputable evidence, on the other hand, it allows the representative of the criminal prosecution body to carefully question the detained person about the circumstances of the commission of the crime, and, on the other hand, the suspect is deprived of the opportunity to hide from the criminal prosecu-

tion body" [31, p.96].

It was also proposed to change the procedure for documenting detention, separating the process of recording evidence from the direct application of the coercive measure, and the information incriminating the person in committing the crime was to be reflected in a separate report. Subsequently, with its help, the grounds and reasons for the detention were to be established and a decision (order) was to be issued on the application of the criminal procedural coercive measure [19, pp.350-360].

Other authors considered that detention, as a procedural action, does not directly establish any evidence and, therefore, the detention report does not have the value of an item of evidence in criminal proceedings [25, p.95].

However, it is not necessary to use the procedural completion (materialization) of detention to collect direct evidence. The detention report retains its evidentiary value only as a document attesting to the circumstances of the procedural detention (time, place, grounds and other circumstances). It can be considered admissible evidence – having the status of a document (Art.93, para.(2), point 5 of the Criminal Procedure Code of the Republic of Moldova), because the information presented in it is relevant for establishing the circumstances referred to in para.(1) of Art.96 of the Criminal Procedure Code of the Republic of Moldova [2].

The physical detention of a person suspected of committing a crime usually takes place for the purpose of forcibly bringing the person to the criminal prosecution bodies. Procedural detention is a criminal prosecution action that, in many cases, is examined only as a procedural act [8, p.413].

According to the meaning of the criminal procedure law, a person becomes a suspect not from the moment of the capture and bringing the person in question to the law enforcement authorities, but after drawing up the report of the suspect's detention by the representative of the criminal prosecution body (Art. 167 of the Criminal Procedure Code of the Republic of Moldova) [2], that is, not from the moment of physical detention, but from the moment of legal (procedural) detention.

Previously, some authors emphasized the need to reflect in the report the time of the actual detention of persons suspected of committing a crime, which could represent an additional guarantee of their rights, given that the first statements of the detained persons are often obtained before the report is drawn up (in the form of 'initial explanations') [27, pp.55-56; 28, p.112].

"A citizen is deprived of the liberty from the moment he/she is forced to go to a place where he/she would not like to be... for the person in question the detention begins, practically, from the moment his/her liberty was restricted. A report must be drawn up on the occasion of detention, and, if possible, immediately. It must specify the time of the actual detention, not the time of the detainee's arrival..." [32, pp.144-145].

The detention report indicates many factual circumstances that are important for resolving the criminal case: the place and time of detention, a description of the clothing, the results of the body search of the detained person, etc. Also, the detention report can be evidence of informing the detainee about his/her rights and ensuring them [16, p.308].

In the legal literature, proposals have also been expressed regarding the time of drawing up the detention report: immediately at the place of detention, two hours after the actual detention, three hours after being brought to the criminal prosecution body, no later than 12 hours after the actual detention or within 24 hours after the actual deten-

tion [22, p.145; 25, p.96].

The detention report must specify not only the time of its preparation, but also the time of the *de facto* (effective) detention of the person, because it is from the moment of the *de facto* restriction of freedom of movement that the person becomes a suspect. However, it is necessary for the law to provide for the obligation to draw up the detention report right at the place of commission of the crime, immediately after its discovery. In this case, the time of detention and the time of drawing up the report will coincide [25, p.96].

The report must correctly indicate the time of *de facto* detention and the time of drawing up the report. Detention reports must contain complete information on the grounds for the detention of persons suspected of committing a crime. It is not correct to stipulate in the detention report the provisions of the articles of the Criminal Procedure Code of the Republic of Moldova only, without mandatory confirming, through properly proven factual data, that the person could hide from the criminal prosecution body or court, prevent the establishment of the truth in the criminal trial or commit other crimes.

In the case of *Leva v. Moldova* [10], the ECtHR found that the applicant was detained on the grounds that a witness named him, although such statements did not exist in the file. In this case, the ECtHR did not tolerate the Government's arguments, which motivated the failure to indicate the names of the witnesses, because there was not enough space in the detention report for such information [15, pp.112-113; 16, pp.308-309].

The detention report must be drawn up within three hours of the person being brought to the criminal prosecution body (para.(1) of Article 167 of the CPC RM). Before drawing up the detention report, it is necessary at least to obtain the victim's statement, to conduct an investigation of the crime scene, to issue an order to initiate criminal investigation, etc. By establishing such a procedure, the legislator did not consider that often the representatives of criminal prosecution bodies are forced, including in obvious cases involving crimes that do not present difficulties, to travel tens or even more kilometers, which makes it impossible to carry out this process within three hours [26, p.38].

Author V.Iu. Melnikov proposes that the law provide that the detention report may be drawn up before the commencement of criminal proceedings and represent a justification for the application of the procedural measure of coercion – the detention of the suspect. He expresses the opinion that the detention decision should be made only by a reasoned order, and not by a report. Moreover, the opinion regarding the need of the issuance of a detention order in parallel with the drawing up of the detention report has gained wide distribution [25, p.97].

In particular, I.Ia. Levchik argued: "... drawing up a report of detention is not appropriate, since, in the case of detention based on direct indications of the eyewitness or the victim that this person committed the crime, no new factual data will be obtained, which have already been presented in the statements of the witnesses or the victim".

These data can be obtained only by carrying out other criminal prosecution actions, which follow the detention, as well as after the body search of the detained person [23, pp.149-150]. The author I.L. Petrukhin noted that detention on the basis of a preliminary decision (order) could be accepted even in cases where there is none of the grounds mentioned in this regard in the criminal procedure law, but when there is at least one ground for applying a preventive measure and, at the same time, evidence has been collected that points out to a certain person as a possible offender [27, p.90].

It seems that in the presented reasoning there is confusion between the grounds for

detention and those necessary for applying preventive measures. It should be noted that the detention report and the order on the detention are two distinct procedural documents. They differ in form and content, and each of them has a specific function in the criminal trial. When issuing the order, it is difficult to indicate in advance the existence of a certain ground for detention, according to the provisions of the criminal procedure law. The detention order does not have to be issued in all cases. According to Art.57, para.(2) point 11 of the Criminal Procedure Code of the Republic of Moldova [2], the criminal prosecution officer has the right to issue orders to the police or other competent bodies regarding detention and forced bringing. This decision is usually taken when it is necessary to carry out the detention in another locality. Besides, Art.258 CPC establishes the possibility of expanding the territorial jurisdiction and delegations of the criminal prosecution body.

Thus, with regard to the detention of the perpetrator, the employee of the ascertaining body, pursuant to para.(2) Art.273 of the Criminal Procedure Code of the Republic of Moldova, shall draw up a report on this act of ascertainment, which shall include: the date, time, exact place and grounds for the detention (deprivation of liberty), as well as the fact that the person was verbally informed of his/her minimum rights. This report must meet all the conditions set out in Art.167, para.(1) CPC.

It is worth remembering that, according to para.(4) of Art.273 of the Criminal Procedure Code, the ascertaining body shall transmit the ascertaining acts, the material items of evidence and the detained person to the criminal prosecution body or the prosecutor immediately, but no later than 3 hours from the moment of the *de facto* detention of the person.

Even if the perpetrator was detained by the employee of the ascertaining body, in any case, upon receiving the materials and the detained person, the head and an officer of the criminal prosecution body are obliged to verify whether the grounds for detention have not lapsed and, only if the conditions established by para.(1) and para.(2) of Art.167 of the Criminal Procedure Code exist, they will proceed to drawing up a report on the detention of the person in question. Otherwise, guided by the provisions of para.(6) of Art.11 CPC, the criminal prosecutions body shall be obliged to order the immediate release of any person illegally detained or if the grounds for detention have lapsed [6, pp.62-64].

The ascertaining bodies, including the police, are not entitled to *de jure* detain a person suspected of committing a crime. However, according to the law (Art.166, para.(1) CPC), this procedural measure of coercion is applied exclusively by the criminal prosecutions body [14, p.32].

Detention is not only the taking of a decision, which can be formalized by a ruling, but also a procedural action, the conduct of which is related to a specific procedure, which must be reflected in the report. Due to the specificity of the legal nature of detention, its results, when executed by the police or other competent bodies on the basis of an order of the criminal prosecutions body, must be recorded in the detention report, indicating the specific grounds for detention. In other cases, it is not appropriate to issue a detention order and, together with it, draw up a detention report [25, p.98].

However, the detention report should be considered as a justification for the actual detention of a person suspected of committing a crime, reflecting the entire process of this activity. When drawing up the detention report, the representative of the criminal prosecution body, as a basis for his/her decision, may rely on factual data obtained from certain sources, the procedural analysis of which allows their use in an official and legal manner.

The presence of objective data pointing to a person possibly involved in a crime is not

enough for the person to become a suspect. A legal basis is also required, that is, a procedural act. This directly corresponds to point 28 of Article 6 of the Criminal Procedure Code of the Republic of Moldova, which stipulates that any decision of the criminal prosecution body, adopted during the criminal trial, must have the character and form of an order. To recognize a person who has been detained procedurally as a suspect would be better, as mentioned above, on the basis of an appropriate order recognizing the person as a suspect.

Several authors have emphasized that the information about the circumstances obtained at the time of physical capture (actual detention), and not following the procedural formalization (perfecting) of the detention, could have evidentiary value [33, p.44].

Such information can be obtained during the activity that directly precedes the drawing up of the detention report, for example, from the persons who carry out the capture and forcibly bring the suspect to the law enforcement authorities. They may reflect data about the circumstances that are to be proven in the criminal trial (Art.96 CPC) [2], such as the person's behavior at the time of capture: resistance, attempt to escape, destruction or concealment of available objects and documents. The circumstances in which the detention took place will show the involvement of this person in the commission of the crime [30, p.82]. In this context, it is necessary to reflect in the detention report the data obtained at the time of the capture *in flagrante delicto*, which precedes the procedural detention [18, p.72].

At the time of the detention of the suspect, the person performing this action is entitled to subject the detained person to a body search, under the conditions of Art.130 of the Criminal Procedure Code of the Republic of Moldova – without drawing up an ordinance to this effect and without the authorization of the investigating judge [8, p.436]. The report should mention whether the suspect was explained the rights and obligations at the time of physical capture. This aspect is essential to ensure respect for the fundamental rights of the detained person and to prevent violations of legal procedures, thus ensuring the subsequent validity of the procedural act.

In the event of a person being detained at the scene of a crime, i.e. before the initiation of criminal proceedings, before being forcibly brought to the criminal prosecution authorities, he or she may be searched in accordance with Art.429 of the Contravention Code of the Republic of Moldova [3], as already mentioned, without a special order and without the authorization of the investigating judge. The results of the search are reflected in the body search report, in accordance with the provisions of Art.429, para.(6) of the Contravention Code, which is attached to the report on the contraventional detention (Art.434 of the Contravention Code). Subsequently, these reports shall be attached to the materials of the criminal case and, together with the interrogation report of the person who drew them up, become evidence in the criminal case. However, in such cases, there is confusion between contraventional actions and criminal procedural ones, which is inadmissible. These procedures should be clearly separated to ensure the fairness and legality of the entire process.

The Criminal Procedure Code of the Republic of Moldova (Art.173) [2] does not clearly specify by what means (mail, fax, telephone, etc.) the notification of the suspect's detention should be sent. In any case, the criminal case materials must contain information on the content and means by which the notification was made. In order to ensure compliance with the confidentiality of the criminal prosecution and to prevent any attempt by the detainee to warn his accomplices, the notification of the detainee's relatives should be

an obligation of the representative of the criminal prosecution body. Only at his discretion, the detainee may be given the opportunity to communicate this personally. Notification of the detainee's relatives may also be carried out through the defense attorney, and in this case a confidentiality signature may be requested regarding the non-disclosure of information about the criminal prosecution.

Information about the suspect's detention is necessary for his/her relatives and acquaintances so that they do not take measures to search for the specific person, so as not to consider the person missing without a trace [8, p.437].

In accordance with the provisions of para.(4) of Art.173 of the Criminal Procedure Code, if there is a need to prevent a serious risk to the life, freedom or physical integrity of a person, to ensure the secrecy of the initial stage of criminal prosecution, to prevent prejudice to criminal proceedings, to prevent the commission of another crime or to protect the victims of crimes, with the reasoned authorization of the investigating judge, the notification of the detention may be postponed for a period of up to 12 hours, except in the case where the detained person is a minor.

In addition to the notification of the detention, a copy of the detention report should be sent to the prosecutor. Moreover, the notification of the prosecutor about the detention must be carried out immediately. This creates conditions for the immediate correction of any violations and for ensuring respect for the legitimate rights and interests of the person.

Besides, the announcement (communication) of the report of detention to the suspect is a legal fact, which generates a legal relationship between the suspect who acquires the subjective right to legal assistance and the person conducting the criminal prosecution. Point 11 of the Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment, adopted by the General Assembly, at 76th Plenary Session, by Resolution 43/173 of 9 December 1988, contains the following imperative provision: "If available, full information about any decision to detain, as well as the reasons for the detention, shall be brought to the attention of the detained person or his lawyer without delay" [1, p.119].

In the detention report, in addition to other information, it is not necessary to include the detainee's explanations, although the suspect is entitled to give explanations regarding the suspicions formulated against him/her, and in the detention report form a place may be reserved for this purpose, with the mention "in connection with the detention (name and initials of the suspect) stated...".

The suspect's explanations represent a statement regarding the circumstances that served as the basis for detention, as well as other circumstances that the person knows about what happened. These explanations can be obtained only from the beginning of the criminal investigation, when indications of the commission of a crime are identified. The detainee's verbal explanations, given directly during the physical detention, are not mentioned in any official document at present, although it would be useful to record them in the detention report. This would help to better clarify the circumstances of the detention and ensure the transparency of the trial. The Criminal Procedure Code explains the right to "give statements and explanations" by the fact that the person who is held criminally liable shall, in all cases, give statements, thereby explaining the circumstances of the crime. In this sense, the explanations represent the content of the statements themselves, that part of them in which the suspect expresses the own view and understanding of the circumstances of the crime of which he/she is suspected.

Arguing for the separation of the concepts of 'explanation' and 'statement', E.M. Kly-

ukov justifiably emphasizes the negative consequences of their identification. According to him, this leads to the fact that the criminal prosecution bodies record only the information and opinions communicated during the interrogation, which harms the legitimate interests of the suspect. Therefore, it is essential that the suspect's explanations, which are not made during a formal interrogation, but which may be relevant to understanding the facts, must be considered and correctly recorded, thus protecting his/her rights and ensuring a fair procedure [21, p.33].

Given that the procedure for obtaining and giving explanations during the preparation of the report on the suspect's detention is not regulated by law, this opens up possibilities for violating the provisions of the criminal procedure law. The possibility of recording the detainee's explanations in the detention report is one of the guarantees of the immediate implementation of the person's right to give explanations, without waiting for the interrogation, which may be postponed within the limits of the legal term of the detention measure. In addition, giving statements is a right, not an obligation of the suspect. The entire interrogation may not take place if the suspect refuses to make statements. At the same time, the right to give explanations, in which the detainee could express the own point of view on the circumstances of the detention, without wishing to disclose information about specific facts, will also remain unrealized.

Therefore, providing explanations represents the exercise of the suspect's right to defense, protecting the person in question against the suspicion formulated against him/her. This contributes to establishing the elements of the subjective side of the crime, as well as to obtaining factual data that can confirm either the involvement or non-involvement of the suspect in committing the crime.

The video recording of the detention, which is mentioned in the report and which is attached to the report, could strengthen the evidence and could constitute a means of guarantee that those involved in the physical detention acted according to the law, but the media coverage of these recordings should not be approved [15, p.114; 16, p.310]. Moreover, means of visualization, diagrams of the place of detention can be drawn up if it is necessary to increase the evidentiary value of the detention report, which shall be attached to the report of this criminal prosecution action [12, p.276].

From the suspect's right to know what he/she is suspected of, the need to indicate in the detention report the initial legal qualification of the crime of which the detained person is suspected arises.

Conclusions. The ambiguity of the procedural form of recording the recognition of a person as a suspect (report, order), provided for in the current legislation, does not always ensure the appropriate guarantees of the right to defense and its status. The appropriate unified form is the order recognizing the person as a suspect, and the detention report must be drawn up in cases of detention of a suspect on the grounds provided for in Article 166 of the Criminal Procedure Code of the Republic of Moldova. However, under these conditions, the "report of detention of the suspect" should be renamed the "report of detention of a person suspected of committing a crime".

The detention report must be drawn up immediately after the actual detention of the suspect or, if this is not possible (for tactical reasons, due to natural disasters, combat actions, etc.), within the shortest possible time after his/her bringing to the criminal prosecution body. From the moment of receiving notification of the detention, the court is obliged to verify its validity and legality.

The detention report may also include such information as: a description of the factual circumstances of the detention, the detainee's verbal explanations, an explanation of the conditions of detention of suspects and the rules of the regime in places of detention, in order to ensure the protection of their rights during the deprivation of liberty.

Finally, as a matter of ***lege ferenda***, we propose to supplement Article 167 of the Criminal Procedure Code of the Republic of Moldova with paragraph (7) to state that: "*The explanations of the person detained as suspected of committing a crime must be recorded in the form of the detention report of the suspect. Such explanations are given of their own free will and must not replace the interrogation of the person suspected of committing a crime*".

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THE FUNCTION OF THE ACCUSATION (PROSECUTION) IN THE CONTEXT OF COMBATING CYBERCRIME. ASPECTS OF COMPARATIVE LAW

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Summary

The main purpose of the criminal trial is to bring the criminal legal relationship before the courts, a context in which we are talking about a set of rights and obligations for the participants in the criminal relationship. Thus we find a system of law valued for the state and society, the function of punishment when fundamental social values are violated. The accusation, therefore the accusation, holds a weight of great importance in the process of preventing and combating the facts that represent crimes. So, in the context of globalization and the incredibly rapid development of computerization, the fight against crime from an informational point of view is of great relevance, because the sphere of cybercrimes that increasingly affect today's society is very topical.

The function of the accusation, either in general if we are talking about crimes, or in particular by correlating it with computer crimes, aims to exercise the coercive function of bringing criminals before the criminal courts to be held criminally liable, by applying the sanctions provided by law. Therefore, the function of accusation (indictment) represents in the legal systems of all states, the dynamic element starting from the criminal prosecution to the final pronouncement of a criminal court decision.

In this study, it will be highlighted that in its evolution, the entire criminal process has known several prosecution systems that have been reflected in particular ways in the criminal procedure characteristic of each criminal law system. At the same time, evidentiary aspects related to the criminal trial will be revealed in relation to the analysis of the prosecution's function.

Keywords: criminal, procedure, accusation, accuser, prosecution, cybercrime, victim, crime.

Introduction. Compared to the civil trial, in which we discuss only the function of the trial, in the criminal procedure we find the preliminary procedure, as a rule, of carrying out a set of investigative actions that are carried out in order to accumulate evidence necessary to find out the legal truth in the respective case. It is particularly relevant to carry out a comparative analysis of the criminal law systems in Europe, thus discovering that European law shows us that the Weberian model "*ideal type*" (I*dealtyp*) is applied, according to which the criminal process takes place in a single stage/phase, namely the trial phase. Thus, European law enshrines the fact that it has not been embraced in relation to the particularities of the criminal trial in which the original victim of the crime – the state and society – reacts through its representatives (the Public Prosecutor's Office) in order to collect evidence and hold the offender criminally responsible, noting the existence in the criminal trial of functions other than the trial [1, p.9].

Considering the above-mentioned aspect, it is important to note that the accusation or accusation means the affirmation, the direction towards the realization of criminal liability, reflected in the procedural act of the criminal prosecution body, of the prosecutor or in the request of the injured party, regarding the commission of the crime by a certain person [2, p.215]. The function of accusation or accusation within the criminal

procedure is carried out through the activity of initiating the criminal action and its exercise, which involves the preparation of a procedural act that represents the accusation of a certain clearly established person, named within the procedure as the perpetrator of the crime, therefore the activity of indictment through the act of initiating the criminal action, sending or summoning a criminal case, by debating, showing the reasons used to prove his accusation before the criminal court, a procedure that also involves the promotion of legal remedies and their motivation within the competent courts, according to the legislation of each state.

The function of accusation holds a significant importance in the process of combating and preventing the facts provided by the criminal law, since by exercising this function, the persons who have committed crimes are summoned to appear before the courts to be held criminally responsible. The indictment function is the dynamic element that advances the criminal process from the beginning of the criminal investigation to the pronouncement of the final criminal decision [3, p.97]. The prosecutors who carry out their activity within the Public Ministry and the judges who work in the criminal sphere, perform the procedural functions of *prosecution* and *judgment*, respectively. In order to ensure the proper administration of criminal justice and to guarantee the independence and impartiality of those who exercise these judicial functions, Criminal Procedure Law regulates their distribution among various bodies. Thus, the prosecution (prosecution function) is in principle granted to the prosecutor, and the mission to decide on the guilt of the accused – to the courts [4, p.205].

In order to define the function of prosecution, it is necessary to take into account a series of elements such as: proving the violation of a legal norm; the commission of an act provided for by the criminal law that constitutes a crime within the meaning of the law; the existence of a criminal law relationship at the time of the violation of a substantive rule of law, by committing an act, which according to the law constitutes a crime. As the criminal law relationship arises, a criminal law relationship is thus formed, which has as a consequence the criminal liability of the perpetrators. In this context, it is obvious that the criminal process represents the activity through which those who have committed crimes are judged by the competent courts, through this activity creating a criminal legal relationship, so a set of rights and obligations is established for the subjects of this legal relationship.

Thus, in the name of the state and society, the right of punishment (*jus puniendi*) is capitalized [5, p.833].

The accelerated development of information technology, worldwide, has the effect of producing antisocial acts, called "*criminal*" both in American criminal law and in the reports presented by computer specialists, facts that could not have existed in the technical conditions existing 10 years ago, for example.

Computer systems now offer new, some even sophisticated opportunities to break laws and create a high potential for committing types of crimes carried out differently than in the known traditional ways.

Methods and materials applied. *Comparative law issues*. In the study carried out we started from the premise that the social reality in all its complexity cannot be captured, accepting that the results of the research will be considered true probabilistic data, context in which we studied the legislation, the specialized literature related to the subject, taking into account the opinions of some experts in the field of reference, the function of

the accusation from the perspective of combating crime with examples from computer forensics as a current benchmark of crime, providing elements of comparative law on the function of the prosecution.

At the same time, we resorted to the secondary analysis of data collected by other researchers, aspects rendered in the bibliographic references shown.

Discussions and results obtained. Achieving the desired correlation in order to highlight what was envisaged, it should be noted that throughout its evolution, the criminal process has been recognized as having different systems of accusation. For example, within the system *of private prosecution* that is specific to the primitive era of revenge or composition, the exercise of criminal action against the perpetrators represented a right of the victim and of the members of his family, even of the entire community called tribe. So, within developed societies this system became useless, since the fight against crimes could not be left to the discretion of the victims, especially if we are talking about crimes that seriously harm the general interests of society as a whole. Thus, it is noted that with regard to the private prosecution, the criminal prosecution was initiated at the initiative of the victim or the heirs.

From the current perspective, the private prosecution signifies particular situations existing in various criminal procedure laws, in which the criminal action is set in motion with the formulation of a criminal complaint by the injured party, from which time the criminal bodies show their intervention as representatives of the rule of law, being the criminal prosecution bodies and when the complaint is filed by the victim of a crime and the state bodies represented by the criminal bodies intervene prosecution and the Prosecutor's Office which intervention involves several stages, in particular we are talking about the continuation of the criminal investigation.

If the victim does not file a complaint as a result of suffering a crime, the criminal process can also be initiated at the initiative of the state bodies which, based on the law, take over and continue the criminal investigation. In some cases, if there is no such complaint by the victim, the criminal investigation cannot be initiated and the case can no longer be judged by a criminal court in order to pronounce a decision to convict the offender [6, p.38-39].

Mr. Igor Dolea, former judge of the Constitutional Court of the Republic of Moldova, stated that the principle of availability was at the origins of the criminal charge. Thus, it was revealed that over time the rule of law has taken all the steps to get involved in the criminal process in order to ensure a safe means of stopping the commission of crimes. It was also shown that the criminal phenomenon presents a high social danger, a context in which the principle of officiality broadens its scope of applicability.

It is obvious that the act provided for by the criminal law and called a crime causes damage to the victims of the crime, an aspect in relation to which the principle of availability is viable for the criminal procedure together with that of the official. Depending on the case, the principle of availability may govern over the principle of officiality [7, p.260].

Being in direct correlation within the system of private accusation, the system *of popular accusation was created*, according to which any citizen injured by the crime had the right to formulate and support the accusation. It has been demonstrated in practice that this system was not complete because the victims of crime did not proceed to formulate complaints, and if they did formulate these complaints, they were driven by revenge through illegal means such as blackmail methods or various set-ups, thus concealing re-

ality. The popular accusation was characterized by the fact that the criminal prosecution was initiated at the initiative of any citizen who proved that he was acting on behalf of society.

On the other hand, *the ex officio prosecution* implied the self-referral of the judges who were handling a certain criminal case with specific persons, according to the principle that the judge is his own prosecutor. Thus, we note that this system of ex officio prosecution violated the principle of separation of procedural functions, namely the pronouncement of a court decision based on the judicial activity must be carried out by a state body other than the one representing the prosecution.

Taking into account the need to organize in the best and fair conditions the activity of holding the perpetrators criminally responsible, the system *of public prosecution was adopted* through a special authority, which bears the name of Public Prosecutor's Office in Western legislation and Prosecutor's Office in the legislation of former socialist countries. Under these circumstances, the criminal investigation is initiated at the initiative of the specialized officials, who are the magistrates of the Public Ministry.

The Public Ministry, being a procedural institution, is the result of a long historical process. Its origin can be found in French law, in the so-called "*les procureurs du roi*" of the fourteenth century, instituted "pour la défense des inmteredu princve et de l'Etat" [8, p.560].

According to the sources, it is shown that at the beginning, the prosecutors were considering the pursuit of tax interests resulting from the collection of fines and confiscations within the royal treasury. Along the way, the limits of their duties have been limited to the duties they have at the moment, namely tracking criminals and supporting the prosecution.

A much more complex and complete mode of organization according to the ordinances of France during the years 1552, 1553 and 1586 is noted. During this period, the title of "*prosecutor's office*" at the beginning resulted from the fact that the prosecutors had a place on the prosecutor's office next to the representatives of the parties, and not on the platform next to the judges [9, p.50-51].

According to the studies carried out so far, it is demonstrated that the public accusation represents the initiation and conduct of the criminal trial without taking into account the will of the victim. At the same time, the principle of officiality takes into account the obligation of the criminal prosecution bodies to discover the truth by unmasking the criminals and holding them criminally responsible, disregarding the position of the victims who most often show revenge.

In this context, criminal prosecution can be defined as the procedure through which justice is done through the activity of administering the information necessary for judging the criminal case, a context in which justice becomes a protector of the general interest of citizens, therefore also of society as a whole.

As far as the public prosecution is concerned, it is noted that the criminal prosecution bodies or the prosecutor initiate the criminal action (criminal prosecution) even if a prior complaint of the victim has not been filed, thus this last aspect is analyzed under the aspect that it represents a right of the victim having no legal consequences on the initiation or termination of the criminal investigation.

In the event that a crime is committed, the state in its capacity as subject of the social values protected by the law is obliged to apply the legal procedures in order to hold

the perpetrators criminally responsible, motivated by the fact that justice is a general process useful for the legal order and for society.

The public interest requires the State to take measures in all circumstances in which crimes are found to have been committed. The protection of the public interest from this point of view also implies the protection of the private interest. Looking at things from this perspective, the individualization, establishment and application of penalties is a public prerogative. There are also cases in which the state does not have the attribute, nor the possibility, to intervene in the ascertainment of the commission of crimes. This last aspect involves the intervention of different institutions that carry out the following activities: the initiation of the criminal process ex officio and the prior complaint. However, we note that the formality of the criminal process implies, first of all, the observance of the positive obligations of the state in the investigation of crimes.

In all cases, the four systems are recognized by numerous legislations, some emphasizing citizens or victims, others on the state, the vast majority knowing, however, two or three of them [10, p.139].

As an example, in the Anglo-Saxon legislation we find especially the system of popular accusation, according to which the initiation of the criminal action can be done by the victim, police bodies or by any person.

Practice shows that the system of public prosecution is superior to all systems, although there are cases in which, due to certain inactions of the authorities with specific competences, there is a possibility that criminals will not be caught and punished, thus harming the legitimate interests of the victims.

It is revealed that the system of popular accusation is maintained in the Anglo-Saxon legislation, and that it does not operate autonomously but in conjunction with a public prosecution (*Attorney General* or *Solicitor General*), which exercises criminal prosecution in the case of crimes that harm the interests of the British Crown.

In the English system, in principle, any citizen can prosecute, but, as a rule, it is the police who launch, at the end of the investigation, the public action. In this way, through a very original fiction, the police act in the same way as any individual who could act, not as a representative of the state, "the police being simply paid for what any citizen could do as a civic duty" [11, p.56].

This principle was mitigated by the existence of a specialized prosecution service: in 1879 the *Director of Public Prosecution* (DPP) was created and in 1985 *the Crown Prosecution Service* (CPS). The Crown Prosecution Service is a public service created for England and Wales, headed by a Director of Public Prosecutions, and can be consulted by Parliament through the *Attorney General* [12, p.85]. This service, headed by the *Director of Public Prosecutions*, has the essential mission of continuing or stopping the prosecution launched by the police [13, p.19].

In cases where the criminal investigation is carried out on behalf of the state or the private person notifies the state bodies, the investigation of the case is carried out by the collaborators of the police bodies, by the prosecution subdivisions within the DPP, by the CPS (since 1986), headed by the *Attorney General*. The British Police carry out the prosecution in the vast majority of crimes. Its powers and powers were substantially expanded by the Law on Police and Evidence in Criminal Cases of 1984. In the case of serious crimes, which threaten the security of the state (riots, acts of corruption, protection of state secrets, etc.), the investigation is carried out by the Department of Public Prosecution

under the leadership of the Attorney General, who is the person with the highest public office in the state in the field of criminal prosecution. The fraud office deals with various frauds, even ensuring investigations [14, p.20].

In the English system there are no very detailed provisions of the private prosecution activity, which is determined by its peculiarities. The adversarial system, characteristic of Anglo-Saxon countries, gives an important role to the parties and considers the judge as an arbitrator in the dispute between the prosecution and the defense; The accuser and the accused, with their lawyers, collect the evidence and administer it before the judge, a neutral and unbiased person, who follows the dispute that takes place in public session and adopts a decision based on what has been presented to him, even if it does not correspond to his own conviction [15, p.473].

The American system is very different from the previous one and much simpler. Since its origins, it has been separated from the English tradition, still founded on the idea of private and popular pursuits. In the United States of America there is today a public service, a veritable Public Prosecutor's Office, which has a monopoly on prosecution: *the United States Attorney* for federal crimes, *the District Attorney* and *the Municipal Attorney* for state crimes. In this way, in the United States of America, the figure of the prosecutor is a leading figure.

According to the criminal procedure regulations, in the USA criminal prosecution is carried out by a wide circle of bodies and persons with positions of responsibility, the most important of which are the Police and the Atornetura. At the same time, it is important to mention that the police carry out criminal prosecution in the vast majority of cases. A key role in initiating criminal prosecution is assigned to *the Attorney Service*.

It is also important to note that in the American system there is no such procedural subject as an injured party, the term victim being used. This fact is determined by the inadmissibility of using a person in two capacities – witness and accuser.

France adopts the system of public prosecution, because it is the Public Prosecutor's Office that ensures the prosecution except for certain crimes, for which several administrations could act, such as, for example, customs, post and telecommunications, roads, etc., either alone or in competition with the Public Prosecutor's Office [16, p.121]. In some cases, the criminal action can also be initiated by the victim and/or by some professional associations. The legislator began to authorize the actions of trade unions and professional orders, as well as a large number of associations.

It is worth mentioning that in France, in 1985, a new collegiate body was established with attributions in the segment of criminal investigation supervision – the Criminal Prosecution Palace. It has broad powers in the field of initiating criminal investigations, verifying the legality and validity of the criminal investigation.

In Germany, the state has a monopoly on prosecution through the Public Prosecutor's Office (*Offizialprinzip*). If the Germans have adopted the system of public accusation, it is because individuals cannot always file a complaint and since prosecution must be mandatory, only a reliable service can ensure compliance with this principle [17, p.542].

The criminal prosecution aims to provide the accuser with the possibility of taking an appropriate decision in the matter of bringing the public accusation. The criminal prosecution itself cannot be focused directly only on the person who is identified, but also on a person unknown at the time of the start of the investigation.

In the German state, criminal prosecution is carried out by the police, the prose-

cutor and the investigating judge. The victim also has a substantial role in the German criminal process. On the one hand, it can act, having the capacity of a party (intervener).

In accordance with Art.380 para.(1) German Code of Criminal Procedure, for certain categories of offences the private prosecution is admitted only if the attempt at reconciliation has failed, the accuser being obliged to provide a confirmation of this fact.

This private action (*privatklage*) also exists in *Swiss law*, where a clear distinction is made between the victim, the civil party claiming reparation (the French conception) and the victim, the criminal party who formulates the complaint (the German conception), i.e. a kind of private accuser who seeks conviction [18, p.323].

At the same time, in Switzerland, the injured party is a party with numerous rights, even if it is an accessory party in relation to the Public Prosecutor's Office. This private criminal action is not limited as in Germany to certain actions.

In the Spanish system, public action can be initiated through the Public Prosecutor's Office (*Ministero Fiscal*). Here, any individual, regardless of whether he was a victim of the crime or not, can also set it in motion. Likewise, foreigners can also file a complaint for crimes concerning their persons or property. Spanish doctrine sees popular action as both a right and a public function.

In certain cases, the system of private prosecution is also recognized. Thus, it exists for punishable offences only at the diligence of the victim, in respect of which the victim can act alone.

The Italian system is very different from the Spanish one, specifically, in the case of ordinary crimes, only the Public Prosecutor's Office has the prerogative to act. In the case of minor crimes that bear the name of private crimes (*querelas*), the criminal prosecution is initiated only at the request of the victim.

On the other hand, under Portuguese law, the Public Prosecutor's Office and the victim have the power to bring proceedings. In this legal system, the victim is not only the injured person, but also the person who has suffered an injury and who initiates the civil action.

In the context of discussing the criminal process for the purpose of achieving justice, there is no doubt that the essential component is crime. Globalization and the incredible rapid development of computerization, the fight against crime from an informational point of view is of great relevance, because the sphere of cybercrimes that hovers more and more in today's society is of great relevance.

Thus, the purpose of justice is clear, namely to stop the phenomenon of crime, by its entire modern means, which requires up-to-date techniques in terms of cybercrime. Crime, in all its aspects, can be stopped/ combated by prompt, operative action and by modern current investigation techniques, by collecting and comparing evidence in order to discover the truth.

The realization of justice involves the activity of the subjects participating in the criminal action, therefore of the participants in the criminal process. The concrete purpose of justice must have as a priority the respect of the fundamental principles enshrined in European law and transposed by the States into national legislation, such as human dignity, the fundamental rights and freedoms of every citizen, legality, the presumption of innocence, the right to defence, the principle of free access to justice, the principle of adversarial proceedings and equality.

All these aspects, without limiting us, complete the complexity of the criminal pro-

cess, characterized by objectivity and legality. To these essential ideas, there is also the aspect of regulating the incompatibilities provided by the legislator in the Criminal Procedure Code, referring here to the institution of abstention and recusal that come to ensure the objectivity of the criminal process and to remove situations that question the quality of the act of justice.

From the perspective of the topic treated, there are several problematic aspects, turning our attention to three of them, as follows:

– A *first problematic aspect* is represented by the way of collaboration between the criminal investigation officers and the prosecutors, a context in which the solution of removing the problematic aspects would be solved simply by exchanging ideas and knowledge between these subjects, thus correcting the problem of delaying the trial and judging within a reasonable time. The accusation exercised by the prosecutor and the criminal investigation officer is a public accusation, but in our legal system there is also the private accusation.

– *The second problematic aspect* (in the case of the Republic of Moldova), considers inopportune legislating of the provision of competence in the field of administering evidence in criminal proceedings, and subjects other than police officers and prosecutors, therefore to the finding bodies, state control bodies, investigation officers, and last but not least to the Agency for the Recovery of Criminal Assets, an aspect that raises real problems. Referring to the relatively numerous legislative changes that have led to the creation of inaccuracies, through the excess of legislating the subjects competent to administer evidence in the criminal trial, it appears of utmost necessity to legislate their coordinated activities, on the contrary, the administration of evidence outside the criminal procedural framework inevitably leads to the violation of the right to a fair trial.

– *Finally*, from the perspective of combating crime, the issue of new crimes in the online space arises, such as identity theft and phishing scams, investment fraud, spoofing (the action of falsifying the sender of sent emails, in order to hide the identity of the real address where the message comes from), as well as romance scams.

The issues raised at international meetings on combating cybercrime are as follows:

– The lack of a global consensus on the definition of "*cybercrime*";

– The lack of a global consensus on the motivation for carrying out these acts;

– The lack of expertise from authorized persons belonging to institutions with control attributions in the field;

– The lack of adequate legal norms regarding access and investigation of computer systems, including the lack of norms through which computerized databases can be confiscated;

– The lack of legislative harmonization regarding investigations in the field;

– The transnational nature of this type of crime;

– The existence of a small number of international treaties on extradition and mutual assistance in the field.

The Council of Europe has initiated its own case study for the development of the legal framework on combating cybercrime. The Council's Commission of Experts on Computer Crime has adopted Recommendation R(89)9, which is also a guide for action for the Member States of the European Union. The United Nations has also been involved in the study and combating of the analyzed phenomenon. Numerous documents have been published, among which the following stand out: the Report "Proposals for the concer-

tation of international actions to combat any form of criminal activity" (1985); Resolution introduced by the representative of Canada on combating computer crime (1990); "United Nations Declaration on Basic Principles of Justice for Victims of Abuse of Power and Crime" (1990); the Report "The Challenge Without Borders: Cyber-crime-international efforts to combat organized crime, transnational" (2000).

The differences that exist between the criminal codes of the states in terms of the way of regulating cybercrime are explained, on the one hand, by the fact that crimes in the field of computer activities have only been recognized worldwide in recent years and have had divergent evaluations, and, on the other hand, by the low level of development of some states in the field of information technologies and telecommunications systems, which did not impose the introduction of regulations in this area.

INTERPOL and EUROPOL also have responsibilities in combating cybercrime, both of which have unspectacular results due, on the one hand, to poor technological equipment, and on the other hand, to the small number of specialists working in this sector and the lack of harmonized legislation.

As a result of the analysis and studies elaborated, it is found that, both at the level of management of institutions with predominantly computerized activity subject to "pressures", and at the level of the simple injured citizen, the essential problem related to the lack of a clear legislation on the responsibilities of surveillance of internet lines in order to limit the damages created as a result of the commission of computer crimes persists.

In this context, the issue of legislation in this area must be clarified, i.e. the harmonization of legislation, and on the other hand, each state must ensure that it has material resources for the appropriate technical equipment, as well as specialized personnel to intervene in these types of crimes.

Conclusions. In order to ensure a correct and complete administration of criminal justice, respecting the guarantees regarding the independence and impartiality of criminal investigation bodies and courts, the criminal legislation concisely legislates the distribution of precise tasks among the subjects – the participants in the criminal trial. Thus, the criminal investigation, therefore the function of prosecution, is in principle the responsibility of the prosecutor, and the actual accusation by which the guilt of the perpetrator is established and the punishment applied is the responsibility of the judge.

In criminal proceedings the function of prosecution is carried out by initiating the criminal action and exercising it, which involves the formation of the accusation against the perpetrator of a crime, the indictment of him by the act of initiating the criminal action, the referral or summons to criminal trial, the support and proof of the accusation before the court, including by exercising appeals and supporting them before the competent courts.

In its evolution, the criminal trial has known several prosecution systems: private prosecution, popular prosecution, ex officio prosecution and public prosecution. The four systems are enshrined in numerous legislations, some focusing on citizens or victims, others on the state, the vast majority of which, however, know two or three of them.

Information technology has quickly established itself as a dominant component in all sectors of activity of modern society. The extremely rapid growth of computer networks has led to the improvement of communication systems, and computer devices have become indispensable tools for carrying out various activities. Computer advances have resulted in the scale of different methods and means of committing crimes, through com-

puters and telephones.

In this context, the internet has become an unlimited platform for launching cyber-attacks, with the involvement of sophisticated methods of breaking the law. The vulnerability created by the exposure of personal data in the online environment and the lack of individual prevention measures for each citizen have favored the unlimited opportunity to commit cybercrimes.

In all these ideas related to the existence of cybercrime, the problematic aspects noted above require their clarification, because the resources on all niches involved in the fight against cybercrime no longer allow gaps of this type. Specifically, against the background of threats to social values in the online system, it is imperative that the criminal system works perfectly, focusing on the analysis and in-depth study of these new types of crimes that invade the whole world.

The clear delimitation of responsibilities and subjects – participants in the criminal process – is the most important priority, taking into account the legislation of the states of the world that are constantly changing due to the accelerated development of information technology.

International cooperation is facing an ongoing challenge posed by the rise of transnational cybercrime. Only a few countries of the world (United States of America, Canada, Australia, Hong Kong, China) have adequate laws to combat the phenomenon in question, but without satisfactory results being obtained, much less the eradication of the phenomenon. Other states (Japan, Belgium, Great Britain, Italy, Malaysia) have brought into discussion the extent of the phenomenon studied, the legal framework existing here being limited to only a few of the areas of computer use.

Starting from the need to harmonize the legislative framework necessary to combat this large-scale criminal phenomenon, immediate measures are needed in the two aforementioned niches, namely the allocation of financial resources for the appropriate technical equipment, the clear establishment of the participants on behalf of the state that carries out the criminal investigation, and last but not least the specialized professional training on this type of crimes – through training courses of high standard for people working in the field of combating cybercrime.

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PROBLEMS AND CHALLENGES IN THE SYSTEM OF COMBATING CRIME

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Summary

This article indicates that the system of combating crime faces a number of challenges that complicate the effective maintenance of law and order. It is emphasized that one of the most serious problems is corruption in law enforcement and the judicial system. It undermines trust in state institutions, promotes impunity for criminals and creates conditions for the flourishing of organized crime. Attention is drawn to the fact that an important factor affecting the crime rate is the shadow economy. Undeclared income, illegal labor market and financial fraud not only reduce budget revenues, but also create a criminal environment, contributing to corruption, money laundering and tax evasion. It is alleged that a separate problem is the rehabilitation and resocialization of persons who have served their sentences. The lack of effective social adaptation programs, discrimination of former prisoners in the labor market and insufficient psychological support contribute to the recurrence of crimes.

Keywords: crime, crime prevention, corruption, shadow economy, criminal legislation, re-socialization, law enforcement.

Introduction. Law enforcement and effective counteraction to crime are important tasks of any state. In the context of globalization and the rapid development of technologies, the crime situation is taking on new forms and threats, which requires the modernization of mechanisms for combating offenses. The modern system of combating crime faces a number of serious challenges, among which corruption plays a key role in law enforcement and the judicial system. It creates an atmosphere of impunity and prevents effective investigation of crimes.

Methods and materials applied. During the study, various methods of scientific knowledge were used. In particular, using the logical-semantic method, it was determined that the system of combating crime covers the fight against corruption, the shadow economy, as well as the rehabilitation and resocialization of persons who have served their sentences. Documentary analysis and formal legal method made it possible to analyze laws and other regulations governing these issues, to identify certain gaps in legislation that may complicate the fight against crime.

Using the comparative legal method, the experience of other countries in the fight against organized crime and corruption was considered, which made it possible to assess the possibility of applying such approaches in Ukraine. Modeling and forecasting meth-

ods have helped to determine possible directions for improving legislation and practical measures in the field of combating crime, in particular regarding control over shadow financial flows and the return of former prisoners to normal life in society.

The scientific and theoretical basis of the work is the scientific works of domestic and foreign scientists in the field of law, sociology, philosophy, psychology, political science, management theory and many other sciences, including interdisciplinary research.

Discussions and results obtained. Corruption is a negative social phenomenon that manifests itself in the criminal use by officials, public and political figures of their rights and official capabilities for the purpose of personal enrichment [1].

A detailed study of the causes and conditions of corruption crime is a key to developing effective measures to counter this negative phenomenon. Among the main factors contributing to the spread of corruption, there are legal, economic, organizational, managerial and social:

– Legal factors include shortcomings of the current legislation, which does not provide a holistic system of anti-corruption measures. The lack of a systematic approach to the preparation of bills, insufficient analysis of the state and trends in corruption lead to the inefficiency of legal norms in the fight against this phenomenon;

– Economic factors are associated with low wages of public servants, uneven distribution of resources and economic instability. These conditions create a favorable environment for the emergence of corruption practices;

– Organizational and managerial factors relate to shortcomings in the structure and functioning of state institutions. Lack of transparency in management processes, inefficiency of control and supervision contribute to the spread of corruption;

– Social factors include society's tolerant attitude to corruption, low level of legal culture and civic activity. This leads to the perception of corruption as a norm and complicates the fight against it [2].

Corruption is one of the key factors that weaken the effectiveness of the law enforcement system and complicate the fight against crime. It penetrates into all spheres of public life, creating conditions for impunity for criminals, undermining law and order and reducing citizens' trust in state institutions.

One of the most serious consequences of corruption is the weakening of law enforcement. When representatives of the police, prosecutor's office or judicial system receive undue benefit, criminals can avoid responsibility, which leads to an increase in crime rates. Unprofessional or biased investigation of criminal proceedings also contributes to the appearance of falsifications and illegal acquittals. In addition, corruption in public administration leads to embezzlement of budget funds that could be used to reform the system of combating crime.

Another important aspect is the connection of corruption with organized crime. Criminal groups often use bribery of public servants to ensure their activities, which makes them almost inviolable. Fighting corruption is critical to effectively combating crime. This requires a comprehensive approach: strengthening anti-corruption legislation, independent judicial control, transparency in the activities of law enforcement agencies and active public participation in exposing corruption schemes.

Analysis of the current legislation on liability for corruption offenses gives grounds to assert that Ukraine has created a generally sufficient legislative framework for effective anti-corruption. It provides for a whole range of criminal-, administration-, civil, disci-

plinary and other measures, which allows to bring to this or that type of responsibility almost any official of public authorities who has committed this or that abuse of power or official position [3, p.140].

Combating corruption should be based on the basic principles that ensure the preservation of the legitimate rights and freedoms of citizens. The effectiveness of anti-corruption measures is possible only with the close cooperation of state bodies, public organizations and society. And state policy in this area should be aimed at eliminating and neutralizing the factors that contribute to the spread of corruption.

An important aspect is the adaptation of the legal framework to changes in the socio-economic and political life of the country. The focus should be on preventive measures based on the analysis and forecasting of corruption trends. Practical actions to prevent and expose corruption schemes should be carried out by relevant law enforcement agencies.

One of the key methods of combating corruption is to increase the efficiency of anti-corruption structures. It is important to respond promptly to citizens' reports, information in the media and the results of sociological research on cases of corruption. It is also necessary to pay attention to its prevalence in various areas of public administration.

Among the most effective methods of preventing corruption manifestations, one can single out minimization of personal contact between public servants and citizens, which reduces the possibility of committing corruption offenses.

An equally important problem is the shadow economy, which contributes to the financing of criminal groups and undermines the economic stability of the state. The shadow economy is a serious challenge for the state, as it not only weakens financial stability, but also contributes to the growth of crime rates. The shadow economy covers illegal business activities, tax evasion, smuggling, corruption schemes and illegal employment, which creates a fertile ground for the development of criminal groups.

According to Z.S. Varnalia, the shadow economy is a complex socio-economic phenomenon, which is represented by a combination of uncontrolled and unregulated (both illegal and legal, but immoral) economic relations between economic entities in obtaining super-profits by hiding income and tax evasion [4, p.430]. Any activity in the field of shadow economy is criminal. One of the key causes of economic offenses is a deviation from generally accepted social norms. It is also important to take into account that social development in many countries occurs in conditions of social and economic instability, inconsistency of legislation, administrative chaos and other factors. Thus, the shadow economy should be considered not only as a deviation from the established standards of social development, but also as a forced reaction of participants in economic relations to adverse conditions. Many types of economic activity are carried out within the law, but the obtained financial results are often hidden or distorted for tax evasion.

Since entrepreneurs seek to act rationally, it can be assumed that in a shadow economy they are guided by the same principles of economic benefit. Therefore, the strategy of counteracting the shadow economy should not be based on strict administrative regulation, but on creating favorable conditions for doing business in the legal field, as well as taking into account the interests of the business community.

One of the main negative consequences of the shadow economy is a decrease in state budget revenues. This limits the ability to finance law enforcement, social programs and economic reforms, which in turn weakens the ability of the state to effectively coun-

ter crime. It is important to note that in conditions of war, the shadow economy critically weakens Ukraine, reducing budget revenues. This directly affects defence, social support, infrastructure recovery and economic stability. It should also be noted that the shadow economy is a source of funding for organized crime. Smuggling, illegal drug production and trafficking, illegal migration and labor exploitation are directly related to the criminal environment, which contributes to the spread of crime and increase the level of social tension. Illegal transportation of goods across the border brings significant profits to criminal groups. This applies to the illegal circulation of alcohol, tobacco, weapons, precious metals and electronics. Smuggling not only deprives the state of customs duties, but also contributes to the spread of dangerous goods, such as counterfeit products and drugs. In the shadow economy, the production of counterfeit goods is widely developed, including fake medicines, alcohol, tobacco and branded products. This not only causes economic damage to legal enterprises, but also threatens public health. The turnover of narcotic substances is one of the most profitable segments of the shadow economy. Criminal groups earn money on the production, smuggling and distribution of drugs, which contributes to an increase in the level of drug addiction, an increase in criminal activity and a general deterioration in social security. Undeclared labor and human trafficking are another source of income for criminal structures. Illegal transportation of migrants, forced labor and sexual exploitation are direct consequences of the functioning of the shadow economy, which violate human rights and deepen social tension.

Do not forget that another important aspect is the spread of corruption, because enterprises operating in the shadows often use bribery to avoid control by government agencies. This creates a vicious circle in which corruption supports the shadow economy, and it, in turn, contributes to the further spread of corruption.

Thus, the financing of organized crime through the shadow economy leads to an increase in corruption, the spread of violent crime, a decrease in the level of security and undermining the economic development of the country. The weakening of state control over illegal financial flows allows criminal groups to strengthen their influence on politics and business. Combating the shadow economy and criminal business is a key task for ensuring law and order and stability in the state. This requires strengthening financial monitoring, reforming the law enforcement system, international cooperation and raising the level of legal culture among citizens. In addition, significant attention should be paid to the effectiveness of criminal legislation. Gaps in legislation and outdated regulatory mechanisms often fail to meet modern challenges, such as cybercrime and transnational organized crime.

Criminal law is one of the key elements of the legal system of any state. Its effectiveness determines the level of law and order, the protection of the rights and freedoms of citizens, as well as ensuring justice. However, in modern conditions there are often situations when the current criminal legislation is not sufficiently effective or outdated, requiring appropriate reforms.

We propose to consider in more detail the term criminal law policy. The author D.O. Balabanova notes: “Criminal policy is understood as the current daily activities of state authorities and the public in organizing and implementing measures to combat crime, as well as the general line in the criminal legal sphere legally defined and implemented by the state authorities, that is, the main directions, priorities, most important tasks, ways and means of implementing criminal legal regulation (criminal legal policy) are adequate

to the existing needs in society. The content of criminal policy is also largely, the implementation of a set of socio-economic and ideological measures designed to influence the causes of crime, and thereby, contribute to its reduction" [5].

The effectiveness of criminal law policy, first of all, is based on the effectiveness of the criminal law and depends on the effectiveness of criminal law norms and institutions. However, to consider the effectiveness of criminal legal policy as a consequence of the effectiveness of certain criminal legal norms and institutions would be wrong. It is determined by the action of the entire complex of criminal legal protection. At the same time, the effectiveness of the policy is significantly influenced by law enforcement practice and the general level of development of legislation and the level of legal awareness of society [6, p.313-314].

One of the key problems is the imperfection of the legal norms governing responsibility for certain types of offenses. Outdated or contradictory provisions complicate their application and contribute to the emergence of legal conflicts. Insufficiently clear wording of norms can also lead to ambiguous interpretation, which reduces the level of legal certainty. For example, Article 364 "Abuse of power or official position» of the Criminal Code of Ukraine contains formulations that do not define clear boundaries between intentional violations and managerial errors, which makes it possible for arbitrary interpretation by the courts" [7]. There is also a problem of excessive criminalization of certain acts and, conversely, insufficient criminal liability for certain offenses. For example, in the field of environmental offenses and cybercrime, the legal mechanisms of punishment are underdeveloped. This leads to a situation where criminals exploit legislative gaps to avoid accountability.

Legal conflict is a discrepancy or contradiction between normative legal acts regulating the same or related legal relations, as well as between the competences of the authorities. In jurisprudence, the issue of legal conflicts is traditionally associated with the problem of inconsistencies in the legal system. In the theory of state and law, this concept is considered much wider [8].

The main problems of legal acts are:

• *Gaps in legislation*. Gaps in normative legal acts arise from the lack of proper regulation of certain social relations. They may be the result of a non-systemic approach to lawmaking or untimely updating of legislation in accordance with modern challenges. The lack of clear rules leads to an ambiguous interpretation of laws, which complicates judicial and administrative practice;

• *Law-making errors*. The low quality of legislative initiatives may be due to the lack of scientific justification in their development. This leads to the excess of authority by the authorities, the adoption of conflicting norms, as well as inconsistency between individual acts. Such shortcomings create legal uncertainty and negatively affect the implementation of the law;

• Disadvantages of rule-making technology. Inaccurate and contradictory wording in normative legal acts complicates their application, contributing to different interpretations and creating legal conflicts. Insufficiently clear definition of concepts, duplication of norms in different acts and the lack of a unified approach to the structure of laws impede effective enforcement.

In order to improve the quality of regulatory legal acts, it is necessary to propose:

– Optimize the process of rulemaking by strengthening the legal expertise of nor-

mative legal acts.

– Increase the level of professional training of legislators and experts in the field of law.

– Eliminate existing conflicts and gaps in the current legislation.

– Implement mechanisms for monitoring the effectiveness of legal norms and their compliance with public needs.

– Ensure the stability of legislation, reducing the excessive frequency of changes in regulations.

The criminal legislation of Ukraine often does not have time to respond to changes in society, technological development and new forms of crime. For example, in the field of cybersecurity, many provisions are outdated and do not take into account the complex mechanisms of modern cybercrime, such as hacker attacks, phishing schemes and the use of cryptocurrency for illegal operations. In addition, new challenges related to military conflicts also require a revision of criminal law. For example, it is necessary to clearly define criminal liability for collaboration, war crimes and terrorist financing, which is especially relevant in the current conditions.

Another aspect of low adaptability is the insufficient development of alternative punishments and mechanisms for resocializing offenders. In many European countries, electronic controls, probation and other methods are actively used to reduce the number of prisoners, while ensuring effective prevention of relapses.

One of the key factors of low efficiency of criminal legislation is problems with the practical implementation of punishments. Despite the presence of clearly defined sanctions in the CCU, judicial practice demonstrates cases of excessive softness or, conversely, too severe sentences. This is often due to the subjective factor of judicial discretion, the influence of corruption factors and the low efficiency of law enforcement agencies. An important problem is also the overload of the penitentiary system and the inefficiency of correctional institutions. In conditions of insufficient funding and inadequate conditions of detention of convicts, the system of execution of sentences does not contribute to their re-socialization, but on the contrary – often becomes an environment for further criminal development of a person.

Another problem is the discrepancy between the punishment and the severity of the crime. For example, for some corruption offenses, courts impose soft fines which do not create the necessary preventive effect. At the same time, in cases of less significant crimes, such as property offenses, convicts receive strict sentences.

Analysis of the effectiveness of the criminal legislation of Ukraine indicates the need for comprehensive reforms, such as:

• Amending the CCU, eliminating contradictions and improving legal mechanisms for regulating responsibility for the latest types of crimes.

• Introduction of more flexible legal mechanisms that will allow responding quickly to new challenges, in particular in the field of cybercrime and military security.

• Reform of the penal system, focusing on the international experience of resocialization of offenders.

• Increase the transparency of the judicial system, ensuring fairness and validity of punishments.

An important aspect is the rehabilitation and resocialization of persons who have served their sentences, because their isolation from society without proper support leads

to the repeated commission of crimes. The problems of rehabilitation and resocialization of persons who have served their sentences are relevant both for society and for the state system of law and order. After serving their sentences, former convicts face numerous difficulties associated with returning to normal life. The main problems of this process are social stigmatization, difficulties with employment, lack of proper support from state and public organizations, as well as psychological aspects of adaptation.

After serving his sentence, the convict again returns to society, where he must comply with his norms and laws. However, due to personal characteristics and pronounced social maladaptation, he does not always manage to do this. That is why the main task of institutions that carry out criminal sentences is the re-socialization of convicts. This process is inextricably linked with social adaptation, and their combination at this stage is one of the key directions of specially criminological prevention of recurrent crime. It is known that imprisonment negatively affects a person's personality, which is confirmed by the high level of repeated crimes among those who have recently served their sentences.

The problem of resocialization remains the focus of attention of criminologists, jurists, teachers, psychologists, sociologists and representatives of other social sciences. The need to provide assistance to persons who have served their sentences in prisons has long been recognized by the world community as an important aspect of social policy.

The process of resocialization takes place in two main stages: 1) during the serving of the sentence; 2) after dismissal.

The first stage is aimed at helping the convict to overcome negative emotions arising from isolation from society and restrictions on personal freedom. It also includes the formation of psychological readiness to perceive these time constraints.

The second stage involves the provision of psycho-emotional support to the liberated person with the aim of its successful social adaptation. Important tasks of this period are the restoration of social ties, adaptation to ordinary life, as well as the formation of a realistic view of the world around us and the difficulties that the former convict may face after release [9].

One of the key problems is the negative attitude of society towards persons who have served their sentences. Social stigmatization leads to the isolation of such people, limits their ability to get a job, find housing or establish relationships in the community. Lack of trust and fear of relapse make many employers refuse former convicts in employment, which greatly complicates their integration into society.

Another significant problem is the lack of effective state support programs. Many people after leaving prison are left without housing, work and livelihoods, which increases the risk of re-committing crimes. In some countries, there are special programs for resocialization, which include vocational training, psychological support and assistance in finding a job. So, even in the decisions of the London International Congress of 1872 written: "Care for those released from prisons is necessary. The state should provide organizations of patronage with constant monetary support and give their activities a governmental character" [10, p.193]. This expression remains relevant today, because one of the key indicators of the development of any civilized state is to ensure the protection and protection of the rights, freedoms and legitimate interests of all citizens, including convicts. It is also important to implement measures aimed at the successful re-socialization of former offenders and their return to a law-abiding life. Ukraine is no exception to this rule, so such initiatives need further development and improvement [11, p.198].

Psychological adaptation also plays an important role in the rehabilitation process. Prolonged stay in prison conditions negatively affects the psycho-emotional state of a person, which can complicate his interaction with the environment. Many ex-convicts need qualified psychological help to overcome stress, aggression, depression and a sense of alienation.

An important direction in solving these problems is the involvement of public organizations and volunteer movements in the rehabilitation process. Social projects, adaptation centers, mentoring and volunteer support can greatly facilitate the re-socialization of former convicts. In addition, it is necessary to improve legislation to ensure social guarantees for such persons, as well as to conduct information campaigns to reduce the level of stigmatization in society.

Thus, the rehabilitation and resocialization of persons who have served their sentences is a complex process that requires the interaction of the state, the public and the former convicts themselves. Only through the creation of favorable conditions for the return of these persons to normal life can the level of recurrent crime be reduced and the harmonious development of society be promoted.

Conclusions. Analysis of problems and challenges in the system of combating crime shows that an effective fight against criminal threats requires an integrated approach, taking into account modern socio-economic conditions, as well as improving legislative and institutional mechanisms.

One of the key factors complicating the fight against crime is corruption. It permeates various levels of public administration, law enforcement and the judicial system, creating conditions for offenders to evade responsibility and undermine citizens' confidence in the legal system. Corruption not only distorts the very principle of justice, but also contributes to the spread of organized crime, reducing the effectiveness of any law enforcement measures. Elimination of this phenomenon is possible only by strengthening anti-corruption legislation, reforming the judicial system and introducing strict control over the activities of public servants.

An equally important factor contributing to the crime situation is the shadow economy. Its significant share in the structure of the national economy means large-scale evasion from taxes, illegal trafficking of goods and financial flows, which creates a financial base for the activities of criminal groups. The fight against shadow processes requires not only strengthening criminal liability for economic crimes, but also creating favorable conditions for conducting legal business, which will minimize incentives for concealing income and violating the law.

The effectiveness of criminal legislation remains another problematic aspect, since the existing norms do not always meet modern challenges. Legislative gaps, unclear wording and low adaptability of the legal system to new types of crime (in particular, cybercrime, financial fraud, environmental offenses) significantly complicate law enforcement activities. Improvement of criminal legislation should be aimed at eliminating legal conflicts, harmonizing norms with European standards and strengthening responsibility for serious crimes.

The issue of rehabilitation and resocialization of persons who have served their sentences deserves special attention. The current system of execution of sentences is mainly aimed at isolating criminals, and not at correcting them, which leads to a high level of relapse. Lack of quality social adaptation programs, discrimination of former prisoners in

employment and stigmatization in society negate efforts to reduce crime. It is necessary to introduce effective mechanisms of post-penitential support, in particular educational and professional programs, probation measures and a system of state control over the social adaptation of persons who have returned to society.

Thus, the considered aspects confirm the need for a systematic approach to combating crime, which should include both preventive measures and improvement of legislative and social mechanisms. In view of this, the modern system of combating crime requires deep reforms, the introduction of anti-corruption measures, the improvement of the legislative framework and the creation of effective mechanisms for the social adaptation of former convicts are necessary as well.

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WITNESS PROTECTION AND RESPECT FOR THE RIGHT TO PRIVACY DURING CRIMINAL PROSECUTION

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Summary

Efficiency in anticipation of new convictions at the ECtHR regarding the respect for the right to private life of witnesses during the criminal investigation phase should not lead to the erroneous application of different approaches and interpretations of criminal procedure norms. Thus, the need to eliminate flawed practices that would jeopardize the smooth running of the procedure and the right to private life of witnesses is essential.

The importance and opportunity of the research is determined by the need to identify legislative gaps that affect the guarantee of the right to private life, and not only, and by the need to develop effective instruments to eliminate abuses in this phase of the criminal investigation. In this regard, the issue of respecting the right to private life and guaranteeing it during the criminal investigation phase remains a sensitive subject.

The study conducted allows to establish the directions and trends of the criminal procedure policy promoted in the Republic of Moldova and Romania in the line of ensuring and realizing the right to private life during the criminal investigation phase. Practical aspects of respecting the right to privacy during the criminal investigation phase are also addressed, in order to highlight the technical and procedural difficulties faced by law enforcement agencies, which contribute to the effective protection of the right to privacy in criminal proceedings, in order to ensure respect for the right to privacy in the practice of applying criminal procedural norms.

Keywords: right to privacy, criminal investigation phase, witnesses, measures, protection.

Introduction. In order to meet the respect for the right to privacy of witnesses, during the criminal investigation phase, it is necessary to implement witness protection measures, through the criminal procedural norms regulated in this regard.

Methods and materials applied. The renal follow-up represents the phase of the renal process in the appropriate judicial body exercising the judicial function, materialized in this article, called renal follow-up.

The main judicial activity related to this function is the activity of criminal prosecution, exercised by criminal prosecution bodies according to specific competencies and subsumed under the scope of the criminal process establishing the offense and bringing it to criminal prosecution, namely "to establish all the circumstances relevant to the case", as a result of the administration of evidence [1, p.747], which also includes witness statements.

In the criminal prosecution phase, judicial activity of a subsidiary nature may also be identified, corresponding to another judicial function, regulated by special provisions, which concerns the rights and freedoms of the person, including respect for the right to

privacy.

This subsidiary activity is exercised either by the criminal prosecution bodies or by other bodies for this phase (the judge of rights and freedoms).

To summarize, in consideration of the express provisions, in the phase of criminal prosecution two judicial functions can be exercised simultaneously:

• Criminal prosecution function (of a principal nature);

• Function of provision on fundamental rights and freedoms of the person (of a subsidiary nature).

The criminal prosecution function is exercised by criminal prosecution bodies (in RO by the prosecutor and criminal investigation bodies; in RM by the prosecutor and criminal prosecution officers specifically designated by the bodies established at the level of the Ministry of Internal Affairs, the Customs Service and the National Anticorruption Center), while the function of providing for fundamental rights and freedoms of individuals is exercised, primarily, by the judge of rights and freedoms in RO and by the investigating judge, in RM, and, subsidiary, also by criminal prosecution bodies.

Therefore, according to the express permission of the law, there is no incompatibility in the simultaneous exercise of two judicial functions by the criminal prosecution bodies.

The purpose of this procedural phase is expressly set out in the Art.252 CPC RM: "collection of necessary evidence regarding the existence of the offense, the identification of the perpetrator, in order to determine whether or not it is appropriate to refer the case to the county court under the terms of the law and to establish his liability", and in Art.285 para.(1) CPC RO: "gathering the necessary evidence regarding the existence of offenses, identifying the persons who committed the offense and establishing the criminal responsibility for the offense, in order to determine whether or not the case should be sent to the county court".

The specific purpose of criminal prosecution mainly concerns the criminal side of the case. However, it can also be extended to the civil side, but in a situation where a civil action must be exercised ex officio.

The object of criminal prosecution, set out at the legislative level of the Republic of Moldova, in Art.252 of the Criminal Procedure Code, and at the legislative level of Romania – in Art.285 of the Criminal Procedure Code, is carried out in practice by fulfilling specific activities. These activities are not only material, but also personal (as a subject of evidence that is carried out in order to bring about the investigation).

By reporting on these complex issues, the implementation of the object of criminal prosecution ensures the discovery of the truth by providing the necessary evidentiary material to clarify the case under all circumstances, including witness evidence.

We consider that the implicit purpose of the evidence-gathering activity, which constitutes the object of the criminal prosecution phase, is to guarantee a fair solution to the criminal case. The connection of witnesses with the criminal case and their protection, respect and protection of the rights to private life is essential. In this sense, the legislation has regulated this legal framework of witness protection and respect for the right to private life, being provided by the CPC RO in Art.125-130, and CPC RM in Art.110.

The Romanian legislation, Art.125-130 CPC, in support of the safety of witnesses who are subject to certain states of risk and risk of being prosecuted for contributions of a decisive nature in criminal cases, granted these witnesses the status of threatened witnesses and vulnerable witnesses. Not only that, the possibility of being included in the

Witness Protection Program was also created for the whistleblower, according to Art.4 para.(1) of Law No.682/2002. The legislation of the Republic of Moldova, even if it does not provide for these titles, threatened witness or vulnerable witness, establishes protection for certain witnesses that we will present below, under certain conditions, according to Art.110 CPC RM.

In this regard, the CPC RO provides in Art.125 the status of threatened witness granted when there is a reasonable suspicion that the life, bodily integrity, freedom, property or professional activity of the witness or a member of his family are endangered, as a result of the data he provides to the judicial bodies or his statements. Art.110 of the CPC RM provides the same legal text, without regard to the status of threatened witness or vulnerable witness. According to Art.110 of the CPC of the Republic of Moldova, protection is applied only in situations when they concern "a serious, particularly serious or exceptionally serious crime and if the respective technical means exist". Also, the protection measures for all categories of witnesses, subject to certain risk situations and to risk due to the contributions of a decisive nature in criminal cases – is established by Art.215 of the CPC. In these situations, the criminal investigation body, the prosecutor, for the criminal investigation phase are obliged to apply the measures provided for by the legislation of the Republic of Moldova for protection of the life, bodily integrity, freedom or property of the participants in the trial, as well as of the close relatives of the witnesses, including their family members, being ordered by a reasoned decision of the prosecutor, mandatory for the body authorized to protect witnesses.

The method of identifying witnesses who require the application of the protection measure, from the first phase, is not established by any of the legislations of the two countries, as an identification norm for the purpose of applying/not applying the protection measure, although, according to Art.20 letter g) of the Law on Police Activity and the Status of the Police Officer of the Republic of Moldova [2], one of the attributions of the Police is to ensure the protection measures for witnesses in the criminal trial. The early identification of a witness who is at risk of being exposed to intimidation or who needs protection is specified in the Second Additional Protocol to the European Convention on Legal Assistance in Criminal Matters[1] [3], adopted in Strasbourg on 8 November 2001, in force since 7 October 2004 for RO, and since 13 March 2012 for RM. According to the ECtHR, in the case of Doorson v. Netherlands, judgment of 26 March 1996, it is provided: "the life, liberty or security of witnesses (...) may be put at risk, as well as other interests falling within the scope of Article 8 of the Convention" [4]. Such interests of witnesses are protected by the Convention, which implies that "the Contracting States should organize their criminal proceedings in such a way that those interests are not unduly put at risk" [4].

In support of the legislation of the two states, regarding witness protection measures, we also mention the Criminal Law Convention on Corruption [5, Art.22], adopted in Strasbourg on 27 January 1999, in force since 30 January 2002 for RO, and since 30 October 2003 for RM. The Convention refers to the legislative and other measures that prove necessary to ensure effective and appropriate protection for persons who provide

[1] "Article 23 Protection of witnesses. When a Party makes a request for assistance under the Convention or one of its protocols concerning a witness who is at risk of being exposed to intimidation or who is in need of protection, the competent authorities of the requesting Party and those of the requested Party shall make every effort to determine together measures for the protection of that person, in accordance with their national law".

information relating to offences (...) or otherwise collaborate with the authorities responsible for investigations or prosecutions and for witnesses who give a statement regarding the offences expressly provided for; and the United Nations Convention against Transnational Organized Crime [6, Art.24] of 15 November 2000, in force since 08 November 2002 for RO, and since 17 February 2005 for RM. The Convention requires states, both RO and RM, to apply "appropriate measures to ensure effective protection against possible acts of reprisal or intimidation of witnesses who, in criminal proceedings, testify regarding the crimes provided for in this Convention and, in case of need, of their parents and other close persons".

Both RO and RM have established in their legislation measures to protect and safeguard witnesses subjected to states of risk and risk of being prosecuted for their contributions of a decisive nature in criminal cases. The violations that occurred are produced from the first moment of identification by the criminal investigation bodies, when the protection measure must be applied.

From this point of view, the existence of reasonable suspicion, as mentioned by the author Remus Budăi, "is left by the legislator to the assessment of the judicial body" [7, p.7]. However, we take a different position on the fact that only the assessment is not sufficient, the moment of ascertaining the existence of the risk and the obligation of the judicial body to analyze it from the first moment, are the essential aspects in this regard. The same author describes the state of danger, in the sense that "it can be deduced from various elements", and as an example he mentions: "the concrete fears of the witness, the object of the file, the name or antecedents of the perpetrator or the relationship between the perpetrator and the witness" [7, p.7]. The analysis of the state of danger must be ascertained and implemented, following a negative result, by the criminal prosecution body for this phase, through adopting and proposing the protection measure. Thus, in the course of the criminal prosecution, once the need to apply the protection measure is identified, Art.126 CPC RO provides that once the status of threatened witness is granted, the prosecutor, ex officio, even if it can also be granted at the request of the witness, to one of the parties or to a principal subject of the proceedings, shall take the following first measures:

• Protection of identity data by granting a pseudonym under which the witness will give his statement;

• Hearing the witness without being present, through audio-video transmission means, with distorted voice and image, when other measures are not sufficient.

In this regard, the prosecutor shall – in the event of the application being accepted or ex officio – order the status of a threatened witness and apply protective measures by reasoned order, which may be conducted in conditions of confidentiality. What happens, however, in the event of the rejection of the witness's application regarding the protective measure? The order and the request which contain the data of the witnesses and the pseudonym not being subject to the protection measure, are not kept confidential, and must be filed with the case file. In these situations a violation of the right to private life may be created, in the sense that this very rejection is contested, and the case reaches, according to Art.339 CPC ROM the hierarchically superior prosecutor for resolution. In the situation where the request is admitted by the hierarchically superior prosecutor, both it and the order are kept confidential, but the issue is the course of the file and the possibility for other persons to obtain the data until the resolution of the request regarding the taking/not taking of the protection measure. In these situations, the request and

the order must not be filed with the case file, until the solution given by the hierarchically superior prosecutor.

In the case of applying the above-mentioned protective measures, the state of danger must not be recorded in the witness's statement, as the statement remains in the case file and may compromise and lead to the witness's disclosure, violating the provisions of Art.129 CPP RO, do not reveal your real address or personal identity data, as these are recorded in a special register to which only the criminal prosecution body, the judge of rights and liberties, the pre-trial chamber judge or the court will have access, under conditions of confidentiality. The state of danger must be recorded in a report drawn up by the criminal prosecution bodies.

Of course, the protection measures are communicated to the authority designated to carry out the measure. Depending on the risks involved, other measures may be taken, such as:

• Surveillance and protection of the witness or provision of temporary accommodation;

• Accompaniment and protection of the witness or family member and assistance during the release.

The protective measures shall be maintained throughout the course of the criminal proceedings if the state of risk has not ceased, and the prosecutor is obliged to verify, at reasonable intervals, whether the conditions for which the protective measures were ordered are maintained, and in the event of disagreement by reasoned order, to continue the measures.

Regarding the proposal to introduce norms, in order to identify or not the need to apply protective measures by the criminal prosecution bodies from the first moment of recording the witness statement, we refer to the Decision of the CJEU RO, No.237/A/2018, where the prosecutor made the decision "not to disclose the identity of the witness, being inspired by the need to ensure the necessary protection against possible reprisals from the defendant" [8].

As a means of protection for the criminal prosecution phase, in the procedure from Romania, the protection measures can also be issued during the preliminary chamber procedure. Even if the legislation of the Republic of Moldova does not provide for the preliminary chamber procedure, in Romania the CPC introduced during the criminal proceedings this phase, preliminary to the court, which can be used to verify both the legality and the basis of the act of sending the case to the court, including the legality of the administration of the cases and the performance of such measures by the criminal prosecution bodies, as well as the elimination of the return of the file to the prosecutor for the resumption of the renal prosecution. This institution, the Pre-Trial Chamber, is known in many European systems, being, also, regulated in the Statute of the International Renal Court and is able to verify the existence of sufficient evidence regarding the renal use, to justify the conduct of the trial phase.

Although the entire procedure in the preliminary chamber is not public, the legislator divided it into two distinct moments, which correspond to the texts of Art.344 CPC RO, respectively Art.345 CPC RO. The text of Art.344 CPC RM are marginally named preparatory and stabilizing measures and are preceded by checks to be made by the pre-trial chamber judge regarding the competence, legality of the referral to the court and the administration of the cases and the performance of such measures by the judicial authorities.

If the state of risk has arisen, without verifying the possibility of the danger occur-

ring and ordering measures beforehand, during the pre-trial proceedings, the pre-trial judge[2] [9], ex officio or upon notification by the prosecutor, shall, together with the order of the threatened witness status, apply one or more of the following measures:

• Surveillance and removal of the witness's residence or provision of temporary accommodation;

• Accompanying and ensuring the protection of the witness or a family member and assisting him/her during the hearings.

The above-mentioned protection measures shall be communicated to the authority designated by law to carry out the measures. The following protection measures may also be issued:

• Non-publicity of the court hearing during the hearing of the witness;

• Hearing the witness without being present in the courtroom, through audio-video transmission media, with distorted voice and image, when other measures are not sufficient;

• Protection of the witness's identity data and the assignment of a pseudonym under which he or she can give testimony.

Although the protective measure procedure exists, there are also shortcomings. In this regard, an aspect that is not provided for by any of the legislations of the two countries, during the criminal investigation phase, when recording the statements of witnesses, and not only, the criminal investigation body must analyze the situation of the case in order to determine whether or not to impose the protection measure, through verifications and responses of the criminal investigation bodies, which lead to the identification of the need for the protection measure or not. The answers can be achieved, as I mentioned above, through the following questions: "Who? What? How? Where? and Why?" [10, p.303].

An example identified following our own documentation, as an imperfection of the legislation and the fact that various forms of violation of privacy may occur, we present Decision No.1295 of the Buzău Court-Criminal Section [11], pronounced on 17.09.2021, in file No.8347/200/2021. In this case, the witness's data, including his/her domicile, were identified by the interested party who influenced the witness, in order to change the solution. In this regard, there were interventions by that party, through threats, pressure, etc.

In short, in the case, the Payments and Intervention Agency for Agriculture sued the said E.C. administrator of a company, for the return of large sums of money and interest, claiming that he was sent an envelope containing a notification report and the proof of communication that was communicated to him by mail was attached to the file. Before the court, the said E.C. contested the signature as not being his, on the proof of receipt of the report, thus drawing up a criminal file under the aspect of committing the crime of material forgery in official documents, provided for by Art.320 of the Romanian Criminal Code, the investigative competence falling to the Prosecutor's Office attached to the Buzău Court. On 19.04.2021 in the criminal file in question No.4692/P/2018, the Prosecutor's Office attached to the Buzău Court ordered the case to be closed, as it was found

[2] In the judicial practice prior to the entry into force of the CPC, it was decided that the defendant's request, before the courts, to be included in the Witness Protection Program is inadmissible, since the legal provisions require cumulative fulfillment of the conditions set out in Art.4 of Law No.682/2002 and regulates the special procedure in this sense, and the initiation of the procedure falls within the competence of the renal research body or the prosecutor, who verifies the fulfillment of the requirements set out by law for the form of application for inclusion in the program. The court, having no such authority,

that the fact did not exist. During the investigation, the postal worker was identified and claimed, which was confirmed in the conclusion of the hearing, that he handed over the personal envelope to the said E.C. on that date, and the latter signed the confirmation document, which he signed with the sheet turned upside down, which the latter contested in court. The said E.C. did not know the personal data of the postal worker, only his name and surname and the institution to which he belonged.

On the occasion of the contestation of the Order to Close, the postal worker was summoned to court as a witness, who stated and claimed that after the hearing in that case he met with the said E.C. and "he proposed 3 times and insistently, to support, on the occasion of a possible subsequent hearing, the fact that he had not handed over the envelope, but that he had left it at the shop located in the yard of his house. He made it clear to him in an obvious way that, by doing so, he would obtain an advantage" [11, p.4].

Even though the hearing was not public, the preliminary chamber judge in Conclusion No.1295 of 17.09.2021, ordered the annulment of the Classification Ordinance and the referral of the case for the completion of the criminal investigation. The conclusion was sent to the parties, namely the said E.C. but also to the witness, the postal worker, in its contents the domicile data of the postal worker, the witness in question, were recorded, even though he reported to the court that he was being pressured to change his statement.

Checks were also carried out on the court portal [12] regarding this conclusion, the solution without the existence of Conclusion 1295 is presented.

In this case, the preliminary chamber judge, by the measure that could be taken, of non-disclosure of the data regarding the postal worker's domicile in the Conclusion, communicated to the petitioner, who has an interest in the case, meant "destruction of the influence of any interest" [13, p.174], and not the possibility of using these data later, given that even in court the postal worker presented that the petitioner proposed to him after a meeting to make an unrealistic claim about the envelope that he did not hand it over to him and would obtain an advantage, insisting on these aspects. We ask ourselves, by passing the data of the postal worker's domicile, a witness in the file, in the Conclusion, does the judge not create the subsequent possibility of committing a crime against the postal worker. What role did the postal worker's address data have in the Preliminary Chamber Court's Conclusion, to the extent that he had the status of a witness in the criminal case? We answer and support that the postal worker's address and address data presented in the Conclusion should have been protected and not included in the Conclusion, as a guarantee of the protection of personal data and the right to privacy. Through this omission of the court and the failure to identify the need to apply the protective measure, a prejudice was created that could have been avoided. After the parties' Conclusion was sent, there were threats that imposed a subsequent protective measure and the investigation of the said E.C. The aspects could have been avoided by protecting and not disclosing the postal worker's address and address data in the Conclusion.

If we refer to the ECtHR jurisprudence, the case of Al – Khawaja and Tahery v. United Kingdom [15] of 15 December 2011, presents the fear attributable to threats or maneuvers. In this sense, "allowing a (...) who has attempted to intimidate witnesses to benefit from the fear caused to them would be incompatible with the rights (...) of witnesses" [14].

According to Art.5 of RO Law No.682/2002, the criminal investigation body during the criminal prosecution phase, at the request of the prosecutor, and the prosecutor, during the pre-trial proceedings, at the request of the pre-trial judge, shall include in the

Program a witness, a family member of the accused or an appropriate person, during the case, formulating reasoned arguments to this effect.

The application for inclusion in the Program must include:

a) Information regarding the relevant case;

b) Personal data of the witness;

c) Data and information provided by the witness, including the decisive role of the witness in finding the truth;

d) Circumstances in which the witness came into possession of the data and information provided or will provide them;

e) Any elements that may prove the state of risk in which the witness is;

f) An estimate of the possibilities of recovering the damage caused by the offense;

g) The persons may be aware of the data and information held by the witness and may have provided it to the judicial authorities or have the intention to provide it;

h) Evaluation of the psychological profile of the witness and other persons to be included in the Program;

i) The risk that the witness and other persons for whom inclusion in the Program is requested present to the community to which they are to be resettled;

j) Data relating to the witness's financial situation;

k) Any other data that may be relevant for evaluating the witness's situation and for including the witness in the Program.

The application for inclusion in the Program must be accompanied by the person's written consent to be included in the Program, as well as by the evaluation carried out by the National Office for Witness Protection, the authority designated to implement the measure at the level of RO, regarding the possibility of including the person in question in the Program (Art.6 of Law No.682/2002). What happens if the witness does not want the measure to be applied and there is no written consent from him? Situations may be different, for the smooth running of the investigation we support the witness, for exceptional situations, to be applied the protection measure ex officio, without his consent if he does not want it.

Regarding the status of vulnerable witness, the prosecutor or, as the case may be, the court may decide to grant the status of vulnerable witness to the following categories of persons: the witness who suffered a trauma as a result of the commission of the crime or as a result of the subsequent behavior of the suspect or defendant; or the minor witness. Once the status of vulnerable witness is granted, the prosecutor and the court may order the protection measure Thus, according to Art.130 CPC RO, upon granting the status of vulnerable witness, during the criminal prosecution, the prosecutor shall provide the following protection measures:

• Accompanying and ensuring the protection of the witness or a family member and assisting him/her during the proceedings;

• Hearing the witness without his/her presence, through audio-video transmission means, with distorted voice and image, when other measures are not sufficient.

During the preliminary chamber proceedings, once the status of a vulnerable witness has been established, the preliminary chamber judge shall decide to impose one or more of the following measures:

• Accompanying and ensuring the protection of the witness or his/her family members and assistance during the hearings;

• The inviolability of the court session during the witness's questioning;

• Hearing the witness without being present in the courtroom, through audio-video transmission media, with distorted voice and image, when other measures are not sufficient;

• Protection of the witness's identity data and the assignment of a pseudonym under which he or she can give testimony.

Distortion of voice and image is not mandatory, but necessary in some situations.

The prosecutor, the pre-trial chamber judge, or the judge of the court, shall rule as soon as possible, but no later than 5 days from the receipt of the request, by order, on the request for inclusion in the Program (Art.7 of Law No.682/2002).

As the case may be, the prosecutor, the pre-trial judge shall communicate the order or decision to the National Office for Witness Protection[3] [15], which shall take all necessary measures to develop and implement the support scheme.

The National Office for Witness Protection, hereinafter referred to as the NOWP, operates within the Ministry of Interior and under the authority of the General Inspectorate of the Romanian Police, at the directorate level, having, among others, the following powers:

a) Submits applications for inclusion in the Program and ordinance, respectively, as provided for in art. 8, second sentence;

b) Take all necessary measures to ensure the inclusion of the Program[4] [16] and aim to achieve this in the best possible conditions;

c) Designate the liaison person between the protected witness and the NOWP, as well as the other person named in the Protection Protocol[5] [16], to ensure this liaison in critical situations;

d) Completes, within 7 days from the date of issuance of the order or the date of inclusion in the Program, the Protection Protocol with each protected witness and completes and includes the support scheme for this witness.

The personnel included in the Program acquire the status of protected witnesses at the time of signing the Protection Protocol[6] [16].

Within 3 days of signing the Protection Protocol, the NOWP shall notify the prosecutor of the fact of his/her inclusion in the Program.

Within the Program, the protected witness must have obligations. In this regard, they must:

[3] Art. 4 - "The NOWP carries out all its activities in compliance with the necessary conditions to ensure the secrecy of the personnel included in the Program and the data and information it holds regarding these assets, including the secrecy of its personnel, equipment and activities, with priority given to protecting the life, integrity and health of witnesses included in the Program".

[4] Art. 2 let. f) - "The Witness Protection Program, hereinafter referred to as the Program, represents the specific activities carried out by the National Office for Witness Protection referred to in Art. 3, with the support of central and local public administration authorities, in order to protect the life, bodily integrity and health of persons who have acquired the status of protected witnesses, under the conditions provided for by this law".

[5] Art. 2 let. i) - "The protection protocol represents a confidential understanding between the National Office for Witness Protection and the protected witness regarding protection and assistance to be provided to the protected witness, the obligations of the witness, the presumptive and the situations in which protection and assistance are provided".

[6] Art. 9 para. (3) – "The protection protocol shall be signed, in the case where the persons referred to in paragraph (1) are minors, by the legal representatives and the like. If the signing of the protection protocol by the legal representative cannot be made or if the signing by such person is contrary to the interests of the minor or if the legal representative refuses to sign, even if If the prosecutor, in the case of a court, considers that inclusion in the Program is in the interest of the minor, the Protection Protocol will be signed personally by the minor, with the consent of the prosecutor, in the case of a court.

• Provide the information and data they possess, which are decisive in finding out the truth in the matter;

• Comply with the measures established in the support scheme;

• Refrain from any activity that could put them at risk or compromise their participation in the Program;

• Not to contact any known person or person from criminal circles, in the case of taking protection measures and assistance measures;

• Immediately to inform the NOWP RO about any changes in personal life and in the activities they carry out during the period of the Program, including in the case of involuntary contact with persons who are the subject of the case.

NOWP RO is obliged to establish a support scheme for each protected witness, to provide protection and assistance measures, and to implement them. These measures may change depending on the evolution of certain parameters related to the state of risk or certain circumstances in the life of the protected witness.

Witness protection measures may be provided, individually or in combination within the framework of the support scheme, as follows:

• Protection of the identity data of the protected witness;

• Protection of the witness's statement;

• Hearing of the protected witness by the judicial authorities, under an identity other than his real one or through special methods of image and voice distortion;

• Protection of the witness in detention, pre-trial detention or in execution of a private order of release, in collaboration with the bodies administering the places of detention;

• Special security measures at home, in custody and to protect the release of the witness to and from the judicial bodies;

• Change of domicile;

• Change of identity;

• Change of appearance.

The assistance measures that can be provided, according to the case, within the framework of the support scheme are:

• Reintegration into another social environment;

• Professional requalification;

• Change or securing of the job;

• Securing of an income until finding a job.

To these measures is added the protection measure regarding the provision of the witness with a firearm and a weapon[7] [17].

Conclusions. The procedure provides for protective measures applied depending on the particularity and necessity of each category of witnesses and risks. By correctly applying the procedure, the respect and protection of the right to privacy of witnesses is ensured.

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NEUROPLASTICITY AS A TOOL FOR REHABILITATION OF OFFENDERS IN THE FIELD OF CYBERCRIME

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Summary

The article presents an analysis of an interdisciplinary approach to crime prevention through changing the thinking of offenders, as traditional punitive methods do not always yield the desired results. The brain's ability to adapt, known as neuroplasticity, opens up new opportunities for correcting deviant behavior, which is particularly relevant in the context of cybercrime.

The research reveals the significance of neuroplasticity as a dynamic property of the brain in changing its structure and function in response to new experiences. Experimental studies have shown that even people prone to offenses can transform their cognitive and behavioral patterns if properly stimulated. That is why cognitive-behavioral therapy programs are actively being developed in international practice, which helps offenders change their way of thinking and decision-making.

The prospect of applying neuroplastic methods in the prevention of cybercrime is noted. Hackers and other digital offenders often have high cognitive potential, which can be redirected to constructive activities, in particular through participation in "white hat" cybersecurity programs. There are successful cases when former cybercriminals have become cybersecurity experts and have worked for the benefit of society.

A number of legal challenges are identified, including the issue of legal regulation of rehabilitation programs and the ethical aspects of using cognitive technologies. The importance of research in the field of the application of cognitive correction methods and neuroplasticity for the development of an effective system of crime prevention in the digital age is emphasized.

Keywords: cybercrime, psychology, neuroplasticity, crime prevention, rehabilitation of offenders.

Introduction. In modern times, world society is gradually moving away from the usual types of punishment, as, starting from the previous century, moving away from the death penalty. Existing approaches to crime prevention, which are mostly punitive, are limited effective. At the moment, there are a number of more peaceful and humane ways for a criminal to bear responsibility. Remembering the policy of human rights, we can note that it is very important to further rehabilitation of a person who has left the places of punishment, in society, in order to continue life as a full-fledged citizen, and not branded as a "sitting" outsider. The techniques used by psychologists, psychotherapists and other specialists working with the psyche of individuals have reached a fairly high level and demonstrate demonstrable results. For example, specialists use such means as neuroplasticity. Research in the field of this method demonstrates that human thinking

and behavior can change under the influence of targeted cognitive training. This opens up new opportunities for the rehabilitation of offenders, in particular in the field of cybercrime. Now computer technologies are developing very rapidly, and cybercriminals are stepping up with them. Based on this, the law enforcement system requires the latest and innovative methods of preventing and combating crime. In particular, such methods that will not only deter offenses, but also help them arise less and less, due to the change in the cognitive patterns of criminals and persons prone to marginal behavior. Therefore, the study of such a scientific issue as the use of neuroplasticity in the form of a method of crime prevention is relevant not only from the theoretical side, but also from the side of practical introduction into the system of means used by the law enforcement system.

Problem statement. Traditional methods of fighting crime focus on punishment and control, but they do not change the way offenders think. The psychological mechanisms that shape criminal behavior remain unexplored in forensic science, although they determine whether a person will return to illegal actions.

Neuroplasticity is the ability of the brain to change under the influence of experience. This means that even stable deviant attitudes can be adjusted if cognitive processes are properly influenced. There are already rehabilitation programs that help offenders change their way of thinking, but they are hardly used in forensic practice.

This is especially true for cybercriminals, who often do not realize their actions as socially dangerous. Their criminal behavior is often based on specific cognitive beliefs, not on the usual motives of offenders. Because of this, standard punishments do not give the desired effect. All of the above questions are not sufficiently investigated.

In this study, we analyzed how neuroplasticity mechanisms can be used to change the thinking of cybercriminals and what rehabilitation methods can be effective in the law enforcement system.

Discussions and results obtained. In recent decades, science has made a breakthrough in understanding the work of the brain, and one of the most popular discoveries was neuroplasticity – the ability of the nervous system to change. It was once believed that the brain of an adult is a fixed structure, and it cannot be rebuilt, but studies have proved the opposite: the brain changes throughout life under the influence of experience and activity. Neuroplasticity is a general concept that combines various mechanisms of change in the nervous system, but it is often used without specifying, which causes confusion even among scientists. In society, this term is also often misunderstood: many believe that neuroplasticity is a magical method of self-development or even a way to treat any diseases. Because of this, it is actively used in motivational training, business and education, promising people to “reprogram the brain” to achieve success. However, not all popular statements about neuroplasticity are confirmed by science, so it is important to distinguish between real brain capabilities and exaggerated commercial statements.

Although neuroplasticity seems like a modern discovery, the idea of the brain’s ability to change has been around for more than 200 years. As early as the 18th century, the Swiss naturalist Charles Bonnet and the Italian anatomist Michele Vincenzo Malacarne discussed the possibility that mental exercises could affect brain growth. Malacarne even conducted experiments on animals and claimed that those who were actively trained had more developed brains. In 1791, German physician Samuel Thomas von Sömmering compared the brain to muscles, suggesting that active mental activity alters its structure as physical exertion alts the body.

Later, in the 19th century, William James first introduced the concept of "plasticity" in his textbook "The Principles of Psychology" (1890), explaining habits as the result of the formation and strengthening of neural connections. Santiago Ramon y Cajal also made a great contribution, which,using microscopy and new methods of coloring tissues, proved that the brain consists of individual cells – neurons that connect with each other. It was his discovery that laid the foundation for modern neuroscience [1].

In the Handbook of Clinical Neurology (Chapter 1 – Defining Neuroplasticity), the author, Giorgio M. Innocenti, defines neuroplasticity as the ability of the brain to change its structure and function in response to internal or external stimuli. He emphasizes that this ability differs during periods of development and in adulthood. During development, neuroplasticity includes the processes of neurogenesis, neuronal migration, differentiation and the formation of connections between them. In adulthood, it manifests itself mainly due to changes in the strength of synaptic connections [2].

Magozhata Kosut notes in her research that neuroplasticity is a fundamental property of the nervous system, which provides its ability to adapt, self-renew and cognitive flexibility. Initially, this concept was considered exclusively in the context of regenerative processes after brain damage, but further scientific experiments have proved that the mechanisms of neuroplasticity is a key for learning, memory formation and even the development of pathological conditions, such as epileptogenesis or chronic pain. Neuroplasticity is a key property of the nervous system, which ensures its adaptability, ability to learn and recover from damage. Its main mechanisms are long-term potentiation (LTP) and long-term attenuation (LTD), which determine the strengthening or weakening of synaptic connections. LTP helps to increase the efficiency of signal transmission due to an increase in the number of glutamatergic receptors, while LTD, on the contrary, reduces their expression, providing flexible regulation of neural activity.

The author identifies the following types of neuroplasticity: synaptic, structural and homeostatic. Synaptic neuroplasticity is manifested in a change in the strength of connections between neurons due to repeated activity. This phenomenon underlies learning and memory, because it determines the efficiency of the transmission of nerve impulse between cells. Structural plasticity is manifested in the morphological changes of dendritic spines: their enlargement and stabilization contribute to the consolidation of long-term memories, while the reduction of little-used synapses ensures the effective functioning of neural networks. Homeostatic plasticity performs a balancing role, maintaining an optimal level of excitability, which prevents both excessive and insufficient neuronal activity. It allows the nervous system to adapt to changes in the external environment, while maintaining the stability of its functioning.

Magozhata Kosut also noted that the development of neuroplasticity is significantly influenced by sensory experience and learning, which leads to the formation of new neural circuits. This is especially noticeable in critical periods of development, when the brain is most sensitive to external stimuli. In the future, a deeper understanding of these mechanisms will contribute to more effective rehabilitation after neurological injuries and optimization of human cognitive potential [3].

Neuroplasticity is the main mechanism of changes in the brain, allowing to adapt to new conditions, and change its structure under the influence of the environment. This phenomenon is being actively investigated, in particular in the context of neurocriminology, which studies how changes in the brain can be associated with criminal behavior.

Modern technologies, such as functional magnetic resonance imaging, can detect abnormalities in brain structures that may be prerequisites for criminal activity. Thanks to neuroplasticity, it is possible to better understand how changes in the brain can affect criminal behavior, which opens up new opportunities for the development of effective methods of crime prevention.

Identifying certain neurobiological markers can help identify individuals prone to aggression and apply specialized therapeutic methods to them even before their predispositions manifest themselves in criminal activities. These techniques may include not only psychotherapeutic approaches, but also neurobiological interventions such as neurofeedback, which helps control brain activity and reduce impulsive responses. In general, the use of neuroplasticity in criminology opens up new horizons for the formation of more effective and personalized strategies in the fight against offenses [4].

In their study, Glenn and Raine examine the neurobiological aspects of criminal behavior, in particular how neuroscience can affect the prediction and prevention of crime, as well as the punishment system for offenders. They focus on the potential applications of neuroscience in criminal law to better understand the causes of aggression and violence, as well as on ethical and legal issues arising from such approaches.

According to the results of their research, neurocriminology, as a scientific discipline is at a stage of development, and although its research opens up new opportunities for predicting and preventing criminal behavior, it is not yet ready for revolutionary changes in the legal system. Technologies that allow the study of brain processes, in particular neurobiological aspects, already provide an opportunity to identify factors that may contribute to a tendency to delinquency. However, it should be noted that the practical application of research results requires careful analysis, because the correlation between neurobiological factors and criminal behavior is often not straightforward.

On the one hand, there is considerable potential to develop new, less invasive methods for crime prevention. For example, the use of neurobiological indicators to predict the risk of recurrence can be a useful tool for the judicial system. However, this raises ethical questions, in particular regarding the admissibility of the influence of biological markers on legal liability. It is also important to study the emotional component of behavior, which, along with cognitive aspects, is critical to understanding the motives of offenders.

Equally important is the discussion on the concept of partial responsibility, which could better reflect the real circumstances of the crimes. As scientific research continues to gain popularity, the issue of neuroethical consequences, such as the stigmatization of persons with certain biological predispositions, is increasingly on the agenda. As a result, although neurocriminology is still at the initial stages of its development, its potential in changing approaches to the punishment and prevention of crime can not be overestimated [5].

In the context of neuroplasticity, it is important to pay attention to how a variety of biological and neurobiological factors can influence decision-making and behavioral responses, particularly under conditions of stress or threat. Research in the field of neurocriminology, in particular, shows how changes in the brain can predispose individuals to certain forms of antisocial behavior, which similarly reflects the reality of cyber threats faced by modern societies. Cyberattacks, especially against local water systems, demonstrate how the lack of resources, training and innovative approaches to protection can lead to catastrophic consequences. In the face of such threats, as in matters of crimi-

nology, it is important to develop prevention programs that take into account not only external factors, but also neurobiological and psychological aspects.

The application of neuroplasticity in these cases can be used to develop more effective prediction and prevention mechanisms, whether in offenses or in cyber threats. For example, just as neurobiological markers can help identify individuals with increased aggressiveness, so in cybersecurity it is important to be able to identify vulnerabilities early to prevent serious incidents. When it comes to cyber defence, the issues of resources and lack of proper support are critical, and an effective response to such challenges requires strategic approaches and interdisciplinary cooperation, which is manifested in neuroplasticity as a means of adapting to new conditions.

In the annual analytical review for the reporting period from October 2023 to September 2024, the publication of which was made possible by the support provided by the US Agency for International Development, according to the terms of the grant to the Ukrainian Foundation for Security Studies within the framework of the USAID Project "Cybersecurity of Critical Infrastructure of Ukraine". It is noted that at the present stage of development of artificial intelligence and cybersecurity technologies, the need to introduce clear regulatory documents governing the development of AI in Ukraine is becoming critical. This includes an emphasis on the use of AI in areas such as information technology, public administration, and the security and defense sector. The preparation of specialized strategies and standards for the implementation of these tasks based on international best practices, in particular the CISA recommendations, will be an important step to increase the effectiveness of the fight against new cyber threats.

At the same time, there is a significant shortage of resources at the local level to ensure an adequate level of cyber defense, which makes this sector vulnerable to attacks. In this regard, it is necessary to promote the development of basic guidelines and tools for self-assessment of cybersecurity at the level of local organizations, which will increase their ability to respond to potential cyber threats.

Also, to improve the overall level of cybersecurity of national infrastructures, it is worth taking into account the experience of countries where similar initiatives have already been implemented, in particular in the field of ensuring the protection of media organizations and critical supply chains. The integration of such measures in Ukraine will contribute to greater resistance to cyber-attacks and reduce possible risks to national security.

An equally important aspect is the need to train new personnel in the field of cybersecurity that meet the requirements of modern technologies. The development of training and retraining programs, in particular in the public sector, should become a priority for the coming years, which will increase the number of highly qualified specialists capable of effectively countering cyber threats at all levels [6].

Khan F., Amatya B., Galea M., Gonzenbach R., Kesslring Yu., in their study described how neuroplasticity can be used as a method of rehabilitation of persons after traumatic events, which is similar to our topic – rehabilitation of offenders after returning from prison. The authors noted that neuroplasticity is a key mechanism in the process of neurorehabilitation, because it allows the brain to restore its functions after injuries or diseases. This phenomenon ensures the ability of neural networks to change their structure and functioning in response to damage or loss of function. It is important that rehabilitation methods focused on neuroplasticity should not only be medical but also multi-

disciplinary, encompassing psychotherapeutic and physiological interventions to ensure comprehensive recovery.

According to studies, in particular for such diseases as stroke, traumatic brain damage, Parkinson's and multiple sclerosis, neuroplastic approaches have proven effective in restoring motor and cognitive functions. One of the most powerful tools in this process is physiotherapy, which has a strong evidence base in improving treatment outcomes. Psychological interventions also continue to be actively investigated as an additional element that can strengthen recovery processes. However, existing studies often demonstrate a certain limitation in methodology, which requires further scientific research to reach clear conclusions regarding other rehabilitation measures [7].

We have already determined above that neuroplasticity is the ability of the brain to adapt to new conditions, which manifests itself in changing the structure and functioning of neural networks in response to a variety of factors, including learning, trauma or environmental influences. This process allows not only to restore lost functions, but also to optimize cognitive processes, improving adaptation to new technological and social conditions. The study of neuroplasticity can be an important tool in the fight against cyberthreats and the prediction of cybercrime, as it allows us to understand how a person adapts to changes in the technological environment, as well as how neuroplastic mechanisms can influence behavior in the context of cybersecurity.

One method of neuroplasticity that can be useful in the fight against cyber threats is to constantly train and train the brain to adapt to new technologies. With the constant development of digital technologies, people are forced to learn new skills to counter cybercrime, such as phishing, virus attacks or social engineering. Learning and consciously improving cognitive skills through neuroplastic mechanisms allows us to more quickly recognize cyber threats, anticipate them and take appropriate security measures. This, in turn, reduces the likelihood of a successful cyber-attack at the level of individual users or organizations.

Another important area of application of neuroplasticity in cybersecurity is the prediction of cybercrime. Understanding how neuroplasticity contributes to the formation of new habits and reactions allows the development of methods of psychological influence to prevent illegal actions in cyberspace. For example, studying changes in the behavior of potential criminals can help predict their next steps. Using neuroplastic approaches, it is possible to develop psychological training programs for potential offenders that, through changing their beliefs and behavior, could reduce the likelihood of committing cybercrime.

Neuroplasticity techniques such as cognitive behavioral therapy, exercises to develop memory and concentration, and training to adapt to new technologies can be applied both in training ordinary users to prevent cyber threats and in strategic cybercrime prevention programs. Over time, these approaches can create a new paradigm in the fight against cybercrime, where psychological methods help not only protect against attacks, but also predict and prevent them [8].

The article "Neuropsychological rehabilitation, neuroimaging and neuroplasticity" discusses the importance of the use of neuroplasticity in neuropsychological rehabilitation, in particular in the context of neuroimaging. The process of neuroplasticity is critical for restoring brain functions after injury or damage, as the brain is able to adapt and modify its neural networks in response to new demands or conditions. Neuroimaging, as a tool, makes it possible to capture these changes and predict the restoration of functions

based on the detected changes in brain structures.

Research suggests that neuroimaging may have implications not only for documenting changes in the brain but also for optimizing the rehabilitation process. In particular, the determination of preserved neural networks in patients allows for adjustment of treatment methods, contributing to a more effective recovery. For example, in the case of patients who have experienced a stroke or severe traumatic brain injury, neuroimaging allows you to determine which networks in the brain remain active, which allows you to focus the efforts of rehabilitologists on these zones to restore functions.

However, the authors note that despite the prospects for using neuroimaging, there are significant difficulties in implementing this approach. One of the main problems is the heterogeneity of patient groups and the lack of standardized rehabilitation methods, which makes it difficult to compare the results of various studies. Moreover, more studies are needed to confirm the effectiveness of such approaches in different clinical settings.

Thus, neuropsychological rehabilitation is entering a new era where innovative approaches such as neuroimaging and neuroplasticity can significantly improve the recovery process. However, to achieve maximum results, further research and improvement of treatment methods are needed so that neuroimaging can become an important tool in personalized rehabilitation. These methods can be used to rehabilitate offenders [9].

In international practice, there are successful examples of rehabilitation programs aimed at changing the cognitive models of former cybercriminals. Within the framework of the case-herd "Hack-and-leak operations in Latin America: the case of Guacamaya", it was found that such attacks significantly affect the politics, reputation of state structures and can even have legal consequences. According to Liemann Escobar and Barr (2024), the hacktivist group Guacamaya, having organized large-scale data leaks, attracted attention, especially in Mexico and Colombia.

The authors of the study note that information coverage of these events in the media varies significantly depending on the political situation in each country. To assess the effects of the attacks, they used the adapted three-stage Shaires model, which helps to understand their impact on public opinion, the reputation of governments and legal aspects. The findings of the study confirm that such operations not only expose the actions of state bodies, but also stimulate public discussions about the transparency of power and its responsibility to citizens.

As a result of participating in such programs, some former cybercriminals began working as cyber defense consultants, developing strategies to counter criminal cyber activity. The program provides not only practical training in technical skills, but also psychological trainings that contribute to changes in the perception of offenses and behavioral attitudes of participants [10].

This approach allows you to change the way of thinking of former cybercriminals, promoting their socialization and involvement in positive activities, using their skills to ensure security, and not to violate the law. This experience demonstrates the effectiveness of neuroplastic methods in changing the cognitive models of offenders and has great potential for adaptation in other countries.

It is worth noting that during our research we determined that despite the widespread idea of neuroplasticity, there are skeptical views about its possibilities that should be taken into account when developing methods for using this phenomenon in medical or criminological practices.

Conclusions. This approach not only offers a transformative way to reshape the mindset of former cybercriminals but also fosters their reintegration into society by encouraging them to use their expertise in constructive ways that contribute to security rather than undermine it. By utilizing neuroplastic methods, we can significantly alter cognitive patterns, shifting offenders' behaviors towards positive change. The results from this case study reveal the profound impact of neuroplasticity on the rehabilitation process and suggest that such methods have a promising future in reducing recidivism, particularly in the context of cybercrime.

However, it is essential to acknowledge that while the potential of neuroplasticity is widely recognized, there remains a degree of skepticism regarding its applicability and effectiveness. These concerns must be carefully addressed in the development of therapeutic strategies, especially in the intersection of psychology, criminology, and medicine. More comprehensive research and a balanced approach to integrating these methods will be crucial in maximizing their impact on both individual offenders and the broader criminal justice system.

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HOSPITALIZATION IN PSYCHIATRIC INSTITUTION – ISSUES AND SOLUTIONS

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Summary

In the practical application of the law regarding hospitalizations in psychiatric institutions, a series of insurmountable normative deficiencies have been identified, the omission of which is capable of affecting fundamental human rights and freedoms and, consequently, leading to the condemnation of the Republic of Moldova at the ECHR. Based on the premise that scientific debate constitutes a real and effective tool for achieving optimal results, this study highlights the issues related to the practical application of the legal institution – hospitalization in a psychiatric institution, the mistakes made by individuals who administer or contribute to the administration of justice, as well as potential solutions for improving the national regulatory framework in this regard.

Keywords: hospitalization, psychiatric institution, right to liberty, security measure, coercive measure, safety measure.

Introduction. Following the widely publicized case of A.B., in which, on August 18, 2017, a person with psychiatric disorders was placed under preventive arrest and subsequently died in detention, an event that led to disciplinary sanctions, including the dismissal of the presiding judge [18], the issue has become very current. In this case, the competent court determined, among other findings, that "*the judge acted in violation of the legal provisions governing the examination of the request for the application of coercive measures*".

Requests or petitions for the application of medical coercive measures before the substantive examination of a criminal case are increasingly being submitted in judicial practice by medical institutions, the prosecution, or the parties involved in legal proceedings. This trend highlights a significant deficiency in the correct understanding of the legal framework governing such measures. Moreover, when such requests are granted, it often results in an unjustified application of the law by the courts.

The decision to submit an individual to involuntary placement must be made by a judicial authority [...] which is required to act under legally prescribed procedures [...] [38]. The phrase "*prescribed by law*" imposes the existence of a fair and adequate procedure that provides the individual with sufficient protection against arbitrary deprivation of liberty [10, § 189]. The inherent vulnerability of individuals with mental illnesses or disabilities demands heightened attention to prevent any actions – or omissions – that may compromise their well-being. Consequently, the involuntary admission of a patient to a psychiatric institution must always be accompanied by the necessary legal safeguards [36].

Therefore, before the substantive examination of the case and the issuance of a ruling on the application of medical coercive measures, the court may authorize hospitalization in a psychiatric institution only in the presence of justifying circumstances. This measure does not fall under procedural coercive measures (including preventive measures) or security measures.

However, the hospitalization of individuals in psychiatric institutions presents certain regulatory particularities, practical application deficiencies, and evident legal shortcomings. Analyzing these aspects is urgently necessary, both to ensure a proper understanding of the legal framework and to facilitate future legislative improvements.

A normative dysfunction has the potential to generate legal uncertainty, create ambiguities regarding the outcome of judicial proceedings, and lead to serious repercussions for the protection of human rights, which, in this context, are subject to unwarranted interference [35].

Methods and materials applied. This study employs a comprehensive approach, utilizing methods such as analysis, synthesis, logical reasoning, literary interpretation, and comparative analysis. The materials used include relevant legislative acts, scientific publications in the field, as well as judicial decisions issued at both national and international levels.

Discussions and results obtained. Under Article 14 of the Convention on the Rights of Persons with Disabilities No.320/2007 [16], State Parties must ensure that persons with disabilities, on an equal basis with others: a) Enjoy the right to liberty and personal security; b) Are not deprived of their liberty illegally or arbitrarily, and that any deprivation of liberty occurs under the law, with the existence of a disability not justifying any form of deprivation of liberty.

According to Article 5 § 1(e) of the European Convention on Human Rights (ECHR) [15], everyone has the right to liberty and security. No one shall be deprived of their liberty except in the following cases and under legal procedures: [...] if it concerns the legal detention of [...] a person with a mental disorder.

Based on Article 51, paragraph (2) of the Constitution [14], no one can be subjected to forced medical treatment except in cases provided by law.

Involuntary admission to a psychiatric institution undoubtedly infringes upon an individual's liberty (as seen in the cases of Luberti vs. Italy [6], David vs. Moldova [3], Filip vs. Romania [4], C.B. vs. Romania [2], etc.) and, therefore, should only occur with judicial authorization [34, p.10]. The absence of procedural rules regarding the detention of individuals deemed incapable, in contrast to the numerous guarantees applied in ordinary cases, is likely to result in a violation of the provisions of Article 5 § 1 of the ECHR (as evidenced in the case of H.L. vs. the United Kingdom [5, §§ 120, 124]).

Deprivation of liberty ordered under Article 5 § 1(e) of the Convention must serve a dual function: on one hand, a social protective function; on the other hand, a therapeutic function, in the best interest of the person with a mental disorder [8].

In the case of Luberti vs. Italy [6, § 27], the European Court of Human Rights established that national authorities must be recognized as having a certain degree of discretionary power in deciding whether an individual should be hospitalized as "mentally ill". An individual cannot be considered "mentally ill" within the meaning of § 1 of Article 5 of the ECHR and deprived of their liberty unless at least the following three conditions are met: it must be credibly demonstrated that the person is mentally ill; the mental disorder

must be of such nature or degree that it justifies compulsory detention; the validity of continuous detention depends on the persistence of such a disorder.

The Law on Mental Health and Well-being No.114/2024 [30] stipulates only two cases for involuntary hospitalization in a psychiatric institution: involuntary admission (Article 31) and treatment through the application of coercive medical measures (Article 23). Formally, the first case is regulated by the Law on Health Protection No.411/1995 (Article 42 Medical Assistance for Persons with Mental Disorders [29]) and the Civil Procedure Code (Articles 309-311 Authorization of Forced Hospitalization and Forced Treatment [11]), while the second case is regulated by the Criminal Procedure Code (Articles 488-503 Procedure for the Application of Coercive Medical Measures [12]).

According to paragraph 27 of the Regulation on the Activity of Psychiatric Hospitals (Annex No.3 to the Ministry of Health Order No.591/2010 [33]), hospitalization in a psychiatric hospital occurs in the following cases: the presence of mental disorders; the psychiatrist's decision to conduct an examination and/ or treatment under inpatient conditions; the court's decision regarding the application of coercive medical measures; the conduct of a psychiatric evaluation in cases and the manner prescribed by law, with the consent of the individual or their legal representative.

Judicial practice shows that the hospitalization of the defendant in a psychiatric institution occurs in a differentiated manner:

• Based on the order for a psychiatric-legal examination, on an outpatient basis, without revoking the preventive measure [28];

• Based on the order for a psychiatric examination, on an inpatient basis, with the revocation of the preventive arrest measure [20, § 5];

• Based on the application of a security/ precautionary measure – hospitalization in a psychiatric institution [17; 27];

• Based on the application of coercive medical measures [39].

The first two cases find their legal basis in Article 152 of the Criminal Procedure Code (Hospitalization in a medical institution for the conduct of judicial expertise).

It is noted that Article 152 of the Criminal Procedure Code fails to reference the status of the accused as "defendant" limiting itself to the terms "suspect" and "accused" even though paragraph (3) addresses the situation where the necessity for hospitalization in a medical institution for judicial expertise arises during the trial.

Since the legal provisions provide a differentiated legal regime for the suspect (whose hospitalization duration is up to 10 days, with the possibility of extension after being formally charged) and the accused (whose hospitalization duration is up to 30 days, with the possibility of extending up to 6 months upon the written request of the physician facing difficulties in conducting the judicial expertise and requiring additional time), we consider it necessary not only to regulate the status of the defendant in the provision of Article 152 of the Criminal Procedure Code but also to establish an appropriately differentiated legal regime for them, taking into account the specific nature of the procedures before the courts.

The third case – as a security/ precautionary measure – is based on the provisions of Article 490 of the Criminal Procedure Code (Hospitalization in a psychiatric institution).

Article 490 of the Criminal Procedure Code, in turn, does not refer to the stage of the trial, explicitly stating that it applies to "a person under criminal investigation" [...] by the "investigative judge".

In this context, we consider it essential to adapt the provisions of Article 490 of the Criminal Procedure Code to situations where the necessity for hospitalization or extension of hospitalization in a psychiatric institution arises during the trial phase. In the same context, the term "up to 6 months" for the hospitalization of the accused in a psychiatric institution, as stipulated in Article 152 para.(6) of the Criminal Procedure Code, should be considered and extended by Article 490 of the same Code. This is because, similar to preventive arrest, hospitalization in a psychiatric institution can and should apply to both stages of the criminal process, up until the ruling is issued by the trial court.

Finally, we consider the phrase "illness of the person" ambiguous in the correct application of the provisions of Article 490 of the Criminal Procedure Code, as the nature of the illness is not explicitly specified, whether it concerns a mental illness, a serious illness of another kind, or a common illness (such as seasonal flu or other viral infections, etc.). In this case, it would be useful to refer to the List of Mental Disorders that deprive a person of the ability to understand their actions or direct them, which serves as the basis for submitting a request for release from serving a sentence or for replacing or revoking preventive detention for seriously ill detainees before the court, as outlined in Annex No.2 to Government Decision No.417/2024 [19].

Regarding the fourth case – hospitalization in a psychiatric institution based on the application of coercive medical measures – it can only have legal applicability within the final resolution of the case through a court ruling regarding the application of coercive medical measures.

Thus, based on Article 99 of the Criminal Code [13], individuals who have committed acts provided by criminal law while in a state of irresponsibility [...] may have the following coercive medical measures applied by the court, which are carried out by the health-care protection institutions: a) Hospitalization in a psychiatric institution with regular supervision; b) Hospitalization in a psychiatric institution with rigorous supervision.

Moreover, according to Article 488, paragraph (1) of the Criminal Procedure Code, coercive medical measures [...] are applied by the court to individuals who have committed harmful acts, provided by criminal law, while in a state of irresponsibility [...] [12].

On the other hand, in domestic jurisprudence, there are multiple cases of the application/ extension of safety measures until the corresponding court decision is adopted.

This results in differentiated jurisprudence either rejecting requests/ proposals for the application/ extension of coercive measures with a medical character [22], or partially admitting such requests/ proposals, with the decision to hospitalize in a psychiatric institution for the detention of arrested individuals [23; 17], or fully admitting the indicated requests/ proposals [21; 24; 25; 26].

In our opinion, the application of coercive medical measures until the adoption of the court ruling within the special procedure is unfounded, as it infringes upon the principle of the presumption of innocence. Moreover, the court that applies a safety measure through a judicial decision is placed in the position of having to double its decision upon issuing the final judgment (as if a criminal penalty were established before the court's final decision, rather than correctly applying preventive measures).

Furthermore, the application of coercive medical measures until the final resolution of the case for 6 months neglects the conditions and guarantees established by law (*i.e.* Articles 152 and 490 of the Criminal Procedure Code).

In the case of *Rakevich vs. Russia*, "domestic law required a judge to rule on the

request for involuntary hospitalization within 5 days from the date of the medical unit's request, but 39 days passed before the court decision was rendered" [7]. Thus, authorizing hospitalization in a psychiatric institution for a period of 6 months (*i.e.* omitting the extensions of up to 30 days as stipulated in Article 152, paragraph (6) CPC) could lead to a finding that "the person's hospitalization was not carried out through a process prescribed by domestic law, and consequently, the violation of Article 5 § 1 of the ECHR" [7].

Thus, the judge who issues a forced hospitalization decision for a victim contrary to the law shall be held accountable under Article 307 of the Criminal Code. In the case where the judge has a prior understanding with the psychiatrist and issues a hospitalization decision contrary to the law, the judge will be held responsible under Article 169 of the Criminal Code as an accomplice, instigator, or organizer of the offence [1, p.329].

Another major issue is that the Psychiatric Clinical Hospital is not equipped to hold persons arrested under Article 490 of the Code of Criminal Procedure. The psychiatric institution does not have spaces/ rooms for the placement/ detention of persons under preventive arrest, and it is not adapted for such forced hospitalization. It is not a penitentiary or a detention facility for criminal investigation, and therefore cannot execute the court orders regarding the hospitalization of detainees in psychiatric institutions for medical coercive measures [32]. This unresolved issue over time leads to a series of conflicts between the judicial, psychiatric, and systems ensuring respect for individuals' physical and mental integrity. Medical institutions repeatedly notify the courts about the impossibility of executing the court orders/ warrants for hospitalization in psychiatric institutions, and the Ombudsman consistently objects to the continued authorization of the hospitalization of defendants in the manner provided for under Article 490 of the Code of Criminal Procedure [32].

The court's orders for placement in a psychiatric facility for purposes other than medical or healthcare-related, such as awaiting the completion of criminal investigations or judicial proceedings, exceed the objectives, responsibilities, and functional competencies of the Clinical Psychiatric Hospital [37].

In turn, to overcome the existing situation, psychiatric medical institutions obtain an agreement from the accused, in which they give their consent to be hospitalized in the medical institution for treatment. This approach seeks to resolve the conflict between the judicial and psychiatric systems, ensuring that the necessary medical care is provided, while also respecting the legal rights and protections of the individuals involved. However, it raises further questions regarding the balance between voluntary and involuntary hospitalization and whether consent in such circumstances can be considered fully informed and free from coercion.

The situation described by Amnesty International highlights a significant concern regarding the voluntary nature of hospitalization, particularly in cases where individuals are initially reluctant but are later convinced or pressured to sign consent forms for treatment. This raises ethical and legal issues about the true voluntariness of the consent obtained, especially when there are elements of coercion involved [31].

The European Court of Human Rights found a violation of Article 5 § 1 (e) of the ECHR in cases where individuals "the claimant was forcibly taken from his home by the police, then, under escort, was handcuffed and taken to the psychiatric hospital where he was urgently admitted". The Court also found that "the expression of willingness to submit voluntarily to a psychiatric examination does not change the Court's determination of

the involuntary nature of the hospitalization" [2, §§ 53, 59]. A lack of consent for hospitalization was also attested in cases where "the person attempted to escape from the clinic several times" [9, p.13].

Conclusions and recommendations. In light of this study, we reach the firm conclusion that the application of medical coercion measures until the adoption of the judicial sentence is unfounded. To eliminate danger and prevent the commission of acts provided by criminal law, it is possible to apply the security measure – hospitalization in a psychiatric institution.

Hospitalization in a psychiatric institution can be applied regardless of whether the person is in detention or not and regardless of whether it is necessary or not to carry out a stationary psychiatric examination. In this case, compliance with the conditions stipulated in Article 152 of the Criminal Procedure Code (particularly the ordering of hospitalization based on the ruling and judicial warrant for a period of up to 30 days, with the possibility of extension up to 6 months) and ensuring the guarantees specified in Article 501, paragraph (1) of the Criminal Procedure Code (*i.e.* verifying the necessity of continuing the measure at least once every 6 months, based on the corresponding medical opinion) are mandatory.

To perfect the national legal framework, we propose establishing a special legal regime for the "defendant" status of the person within the provisions of Article 152 of the Criminal Procedure Code.

At the same time, we propose adapting the provisions of Article 490 of the Criminal Procedure Code to situations where the necessity of hospitalization/ extension of hospitalization in a psychiatric institution has arisen during the trial process.

Finally, we emphasize the urgent need to adapt certain sectors within psychiatric institutions for the detention of persons for whom the measure of hospitalization in a psychiatric institution has been ordered (regulation of status and legal competencies, providing appropriate equipment and funding, training personnel, providing rooms, developing internal instructions and rules, etc.).

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PERSONAL GADGETS OF MEDICAL STAFF: CONVENIENCE, RISKS, LEGAL REGULATION

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Summary

The paper explores the benefits and risks of using personal gadgets by medical professionals in the context of digitalization of healthcare. Legal, ethical and organizational aspects related to the protection of patients' confidential information, medical confidentiality and prevention of cyber threats are considered. Approaches to secure integration of personal devices, including BYOD system, mobile device management (MDM) tools and personnel training in cybersecurity basics are proposed. The need for standardization of international standards, certification of medical applications and development of corporate regulations is substantiated. The paper emphasizes the importance of an integrated approach to maintain a balance between innovation and patient data protection.

Keywords: digital medicine, personal gadgets, medical malpractice, cybersecurity, BYOD.

Introduction. Modern digital technologies are having a significant impact on healthcare, transforming the processes of diagnosis, treatment and interaction between healthcare professionals and patients. One of the key trends in recent years has been the active use of personal gadgets – smartphones, tablets and laptops – by healthcare professionals in their professional activities. These devices provide instant access to professional databases, clinical guidelines, electronic document management systems and tools for remote patient monitoring. Such use contributes to faster decision-making, reducing errors and improving the quality of care.

However, the use of personal devices in medical practice involves a number of ethical, legal and organizational challenges. There are issues related to the protection of patients' personal data, medical confidentiality, prevention of unauthorized access to medical information, and compliance with cybersecurity principles. In addition, the lack of clear distinctions between personal and professional use of devices can lead to misrepresentation of medical records, confusion in data management, and, ultimately, decreased patient trust in the healthcare system. Uncontrolled or insufficiently regulated use of gadgets can also have legal consequences for healthcare professionals and organizations.

The purpose of the study is to comprehensively examine the benefits and risks of using personal gadgets in the professional activities of health care workers and to develop recommendations for their safe and effective use.

Methods and materials applied. The research material included scientific publications, methodological guidelines, recommendations, protocols, as well as national and international legal acts regulating medical crimes, protection of patients' rights and pro-

fessional ethics of health care. Personal gadget refers to a device owned by a health worker and used at the health worker's discretion. Personal gadget means a device owned by the employer but customized and designed for individual use by a specific health worker. Sources included data from international and national databases such as PubMed, Google Scholar, CyberLeninka, National Bibliometric Instrument. Legal information systems were used to analyze legislation, including Register of Legal Acts of the Republic of Moldova, IT System Legislation of the Republic of Moldova and similar platforms of other countries. Comparative and content analysis methods of selected normative and scientific sources were used for the study.

Discussions and results obtained. *1. Digitalization of medicine and the role of personal gadgets.* The increasing role of personal electronic devices (smartphones, tablets, laptops) in health care is driven by several factors. First, smartphones provide healthcare professionals with instant access to professional databases, electronic journals, and treatment guidelines. According to a study by Ventola, the availability of mobile apps for checking drug interactions and dosage recommendations reduces clinical errors and improves the quality of care delivery [23]. Secondly, in many healthcare institutions, there are increasing demands for rapid data sharing, as timely interaction between team members determines the outcome of treatment, especially in acute care.

Socio-cultural factors also contribute to the development of the use of personal gadgets in medicine. The majority of modern specialists, having mastered digital technologies at university, continue to actively use them in their practice. According to the report of the World Health Organization [21], the expansion of digital skills among medical staff contributes to the efficiency of the health care system as a whole. These trends can be traced not only in developed countries, but also in middle-income countries, where mobile communication often becomes an important tool for delivering health services to remote regions.

In addition, the concept of digital medicine, which is based on the integration of innovative technologies into practice, is becoming increasingly popular. In some cases, personal devices are seen as mobile clinics that allow collecting patient data remotely: measuring heart rate, blood pressure, and blood sugar levels using special accessories and mobile applications. Such solutions significantly simplify the monitoring process and form an evidence base for telemedicine consultations, which are being actively developed in Moldova, Ukraine, Romania, Russia and other countries in accordance with local regulations.

However, such a rapid proliferation of personal gadgets in the medical environment also raises significant organizational, legal, and ethical challenges. One of the key issues is the separation of personal and professional information. According to a number of international studies, the lack of clear boundaries between personal and work space on a phone or tablet can lead to data confusion, breaches of medical confidentiality and misrepresentation of medical records. In addition, cybersecurity is significantly compromised if every personal device is connected to a hospital's corporate network without proper security measures in place.

On the ethical side, there is the problem of maintaining trust between doctor and patient. If a patient suspects that his/her personal information (photos, videos, examination results) may be stored or transmitted through private channels not intended for medical use, this may negatively affect the principle of confidentiality enshrined in many

professional codes. For example, the Code of Medical Ethics of Romania [4] emphasizes the doctor's obligation to ensure the privacy of the patient and to respect the secrecy of the therapeutic process. Similar provisions exist in the legislation of the Republic of Moldova, Ukraine and the Russian Federation.

From an organizational point of view, for many clinics and hospitals the question remains: who is responsible for setting up and maintaining the security of personal gadgets? Some institutions are moving towards Bring Your Own Device (BYOD) systems, combining personal and corporate environments. However, without clear regulation, supervision and training of staff, the situation can get out of control, which has repeatedly led to major data breaches and lawsuits against medical organizations [19]. Thus, the rapid expansion of digital technologies offers significant benefits, but requires a coordinated approach that includes defining clear rules for the use of personal devices and fostering a culture of responsible attitude to confidential information.

2. Benefits of using personal devices in medical practice. WHO in its official agenda on digital health emphasizes that mobile applications, telemedicine, electronic patient management systems and other innovative solutions have the potential to reduce the gap in access to health care [24]. These initiatives are actively supported not only by international organizations, but also by national ministries of health in Moldova, Romania, Ukraine and other countries, which implement relevant bylaws and strategies. In Moldova, for example, there is a national e-Health program aimed at digitalization of medicine, and in Ukraine there are pilot projects on electronic medical records and telemedicine consultation in rural areas.

A significant part of these programs involves the use of mobile gadgets at the primary health care level. General practitioners and family doctors often access remote databases and consult with specialists from regional centers using smartphones and tablets. In conditions of limited funding or shortage of stationary equipment, personal mobile devices become indispensable assistants. However, legislators often underestimate the legal and ethical aspects of such use, which creates a regulatory gap. In most cases, national programs of digitalization of healthcare provide for the use of secure communication channels, but in practice, doctors continue to use personal messengers and applications that do not always meet security standards. Therefore, there is a need to harmonize WHO international guidelines with local regulations, as well as to introduce strict certification of medical software.

One of the most obvious benefits of using personal gadgets in medicine is improved communication within interdisciplinary teams. The rapid exchange of data can reduce the time needed to make a solution and thus speed up the response time in emergency situations. Several studies have shown that doctors who use mobile devices for real-time consultations are less likely to make dosage errors, respond faster to changes in patient condition, and maintain documentation more efficiently [23]. For clinical and healthcare managers, this means increased productivity and optimized processes.

Improved quality of care is also linked to the ability to quickly access scientific publications, clinical protocols and the latest evidence-based guidelines. Whereas in the past a doctor had to use a desktop computer or go to a medical library to find the information he or she needed, today many guidelines are available in mobile applications, supplemented by regular updates. This accessibility of knowledge leads to more correct and up-to-date treatment regimens, as well as allows for more rapid changes in therapy tactics

based on new scientific evidence [17]. However, these benefits directly depend on the doctor's ability to properly separate personal activity on a mobile device from professional activity, as well as on compliance with information security rules to exclude the risks of data compromise.

3. *Ethical and organizational challenges of digital medicine*. Legal regulation of the use of personal gadgets in medicine is formed at the intersection of several levels: international, regional (e.g., within the European Union) and national. This multilevel structure complicates the situation, as each country adapts the common norms according to its traditions, legal system and level of development of digital infrastructure. In Republic of Moldova there is Law No.133 of 08.07.2011 on the protection of personal data, which prescribes the mandatory registration of personal data operators and the development of internal policies for their protection [15]. The EU has introduced the well-known GDPR – Regulation (EU) 2016/679 (General Data Protection Regulation) [20], and the US has the Health Insurance Portability and Accountability Act (HIPAA) [22], which establishes strict requirements for the transfer and storage of medical information.

The multilevel nature of regulation reflects the complexity of medical activity itself. Professional standards and ethical norms overlap with information security issues, which creates a number of conflicts between the need for fast and convenient data exchange and the need for strict access control [8]. In addition, national laws often conflict with local regulations issued by healthcare institutions for internal use. As a result, health care providers may find themselves in a situation of legal uncertainty, which increases the risks of misuse of gadgets.

In the context of medical confidentiality and the protection of patients' personal data, technical and organizational security mechanisms are of particular importance. Standard measures such as encrypting communication channels and backing up medical data are only partially decisive when it comes to healthcare providers' personal smartphones and tablets. To guarantee privacy, comprehensive strategies are needed, from choosing certified messaging apps to installing multi-factor authentication on the device [6]. Otherwise, personal devices can become a weak link in the cybersecurity of healthcare institutions.

The effectiveness of certain measures depends on the degree of awareness and motivation of staff. Health care workers who do not realize the scale of legal consequences may neglect basic rules: keeping passwords in the open, using insecure cloud services, or sharing information with patients via social networks. In this sense, a culture of security remains a significant factor: if a team adheres to strict regulations and management provides ongoing training and audits, the likelihood of data breaches is reduced. Nevertheless, even in countries with strict legislation (e.g., Germany, where GDPR is fully implemented) there are incidents of medical data leakage [12]. This emphasizes that laws alone are not enough: system solutions and continuous monitoring are needed.

As the issues of personal data protection are becoming more and more acute in the society, relevant court proceedings on the facts of leakage of medical information are getting wide coverage. In Moldova, Ukraine, Romania and Russia, there have been numerous cases when either a healthcare institution or a specific employee was held liable for unauthorized transfer of patient data. Court practice shows that in most cases the key point is to prove the guilt or negligence of the medical worker, as well as to check whether the clinic had any internal instructions and whether the staff had been trained in the use

of personal devices.

Some cases reach the criminal courts, especially if the disclosure of information had serious consequences for the patient or was used for personal gain. In this aspect, it is relevant to mention the problem of cross-border data transfer, when a doctor consults foreign colleagues and as a result the patient's personal data is disseminated outside the jurisdiction of the national law. In such cases, legal norms may be difficult to apply, as different countries regulate the circulation of medical data differently, and conflicting norms may arise. Thus, judicial practice forces healthcare institutions not only to improve internal protocols, but also to carefully control the use of personal gadgets, up to and including banning their use for certain activities.

4. *Legal regulation and data security*. The personal gadgets of healthcare workers are potentially vulnerable because they often do not meet corporate security standards. Leakage scenarios may include loss or theft of the device, malware infection, use of public Wi-Fi networks without encryption, and deliberate actions of the users themselves [3; 10]. Analysis of such incidents shows that even the trivial transmission of a patient's photo or video through a common messenger can lead to the uncontrolled dissemination of confidential information.

In modern medicine, where telemedicine is increasingly used, the risk is also increased because digital communication channels such as videoconferencing, online chats and e-mail are becoming commonplace. According to studies conducted in several European clinics, a significant proportion of staff has at least once sent patient data from their personal smartphones without proper encryption [5]. It is noteworthy that even formally certified applications can collect metadata that can, under certain conditions, reveal the identity of a patient and the nature of the treatment provided.

To reduce the likelihood of leakage and privacy breaches, various professional associations have developed guidelines and standards. For example, the American Medical Association has issued Guidelines for Patient-Physician Electronic Mail, which emphasizes the importance of encryption, clear patient information, and strict segregation of personal and professional correspondence [14]. In Europe, similar recommendations are contained in the European Commission's Joint Protocols on Telemedicine, which emphasize the need for clear authentication protocols and regular audits of personal device use [18].

In addition, a culture of security in a medical organization requires ongoing cyber hygiene training for staff, development and updating of internal regulations, and disciplinary action for perpetrators. Implementing such strategies requires budget and administrative effort, but data shows that investments in systemic cybersecurity are less costly than the consequences of lawsuits and reputational losses after major breaches. The main challenge is to ensure continued compliance, as the habit of using personal gadgets for work-related solutions is deeply ingrained in the daily practices of doctors and nurses.

5. *Strategies to minimize risks when using personal gadgets*. The BYOD concept appeared in the corporate segment back in the 2010s, but now it is actively penetrating healthcare, where mobility and rapid access to data are critical. Studies indicate that in conditions of resource constraints, hospital staff are more willing to use their own devices than standard desktop computers or laptops provided by their employers [3]. This increases the speed of accessing electronic medical records, reduces logistical time and improves collaboration between colleagues. At the same time, the budget is saved: insti-

tutions are not obliged to purchase and maintain a large number of mobile devices.

However, the main benefit of BYOD is the increased satisfaction of employees who continue to work in the familiar digital environment. It also has a positive effect on motivation, as medical staff does not need to learn new technology, install unknown applications, etc. According to a number of American clinics, the introduction of BYOD with simultaneous certification of used applications for medical information exchange has improved coordination between different departments [19]. Nevertheless, the success of such a strategy largely depends on the depth of preliminary preparation, which should include the development of clear security policies, training programs, and continuous monitoring of compliance with regulations.

Despite the obvious benefits, BYOD also comes with significant risks. Not every personal device is sufficiently secure, and the installation of multi-stage authentication or corporate VPN clients can cause user frustration that interferes with daily work. In addition to technical difficulties, there are also legal risks: when an employee quits, there is a question of who and how deletes patients' medical data from his personal gadget [13]. Such situations can lead to unauthorized storage and further dissemination of confidential information.

To mitigate risk, organizations are implementing Mobile Device Management (MDM) software – specialized systems that allow employees' personal devices to be administered remotely. This makes it possible to block them if they are lost or stolen, set restrictions on application installation, and automatically delete sensitive data after the end of the employment contract. However, such tools require additional financial outlay and often raise questions about employee privacy, as the employer is given some authority to control personal devices. In the end, the success of BYOD in healthcare depends on a balance between technical security measures, legal regulations and respect for the privacy boundaries of healthcare workers.

6. *Specifics of using personal devices in critical environments*. The issue of photographing and videotaping patients for therapeutic purposes directly affects the principles of bioethics, in particular the autonomy of the individual and the need for informed consent. In many countries, legislation indicates that the patient must be informed in advance of the purpose, perceived risks and extent of use of the recorded material. If a recording is made on a personal device without clear guarantees of confidentiality, the patient may consider it an invasion of privacy, and in some jurisdictions it may be considered a breach of medical confidentiality.

An additional concern is the subsequent storage or use of such recordings. Even in cases where the photo or video is important for documenting treatment or presenting at a medical conference, there is a risk that the material will end up on uncontrolled resources. The Codes of Ethics of Romania, Moldova, Ukraine, and Russia contain general provisions about the need to be careful with patient personal data, but do not always specify technical details [4]. As a result, a medical worker may find himself in a situation where an elementary careless posting of a photo may become a reason for a lawsuit.

The use of personal smartphones and tablets is most dangerous in highly specialized units, where a mistake can cost a patient's life or compromise sterility. In operating rooms where strict aseptic and antiseptic protocols are in place, dropping in a gadget can increase the likelihood of infection in the operating area [21]. In addition, distracting the surgeon with a phone call or message has the potential to affect the course of surgery.

Therefore, many hospitals set strict bans on the use of personal devices in operating rooms: only special sterile medical tablets designed to monitor the patient's vital signs are allowed.

In intensive care units, constant monitoring of patients is critical, so any unauthorized filming or use of messengers can be distracting to staff. In some cases, staff may substitute the use of clinical monitors for viewing data from a personal gadget, which has the potential for errors. Organizational protocols of some large clinics in Europe and the United States contain strict norms to limit personal activity of staff in such departments, up to a complete ban on smartphones [11]. Despite the fact that modern digital solutions can facilitate the work of doctors, their inappropriate use in critical areas can do more harm than good.

7. *Legal liability for data leakage*. Legal qualification of breach of confidentiality of medical data varies from administrative liability to criminal prosecution, depending on the severity of consequences and intent. Most national legislations (Moldova, Ukraine, Russia, Romania) indicate that a doctor who discloses the secrecy of treatment or personal data of a patient can be fined, disqualified or imprisoned (if significant damage is involved). However, the difference between reckless leakage and willful disclosure can be subtle. Case law often considers whether the healthcare organization had adequate safety protocols and whether the employee had received appropriate training.

The digital footprints that doctors leave on their devices are important. If an inspection reveals that a patient's personal data has been stored or transmitted through unsecured channels, resulting in a leak, this may be perceived as gross negligence, which falls within the scope of the offense. In such a case, the role of the personal gadget becomes a key detail that determines not only the degree of the doctor's guilt, but also the liability of the institution's managers who failed to ensure proper controls and BYOD policies.

With the development of digital technologies and global telemedicine, many cases involving leaks of medical information are becoming cross-border in nature. A doctor consulting a patient from another country may use cloud services located on servers in third countries, which complicates the issue of jurisdiction and law enforcement cooperation. Europol and Interpol are increasingly involved in investigations of crimes related to the theft and sale of medical data, as such information has a high value on the black market [1]. This means that a doctor who violates confidentiality may face not only internal disciplinary measures, but also a serious international investigation if the leak is global in scope.

As a result, law enforcement practice demonstrates the growing attention to digital security issues in medicine. Underestimating the risks of personal gadgets can lead to severe consequences, from loss of patient trust and large fines to criminal penalties. Therefore, health care providers need not only to be aware of their country's legal framework, but also to realize that in today's digital environment, privacy concerns transcend national boundaries.

8. *Prospects for digital medicine and the balance between innovation and safety*. The final conclusion is that the use of personal gadgets in medicine is a natural and largely productive phenomenon, if it is accompanied by a well-designed risk management system. Many studies confirm that mobility and quick access to information improve the quality of treatment, reduce operating time and promote an integrated approach to patient management [23]. However, a balanced approach is required: digital innovations

should not contradict the fundamental principles of medical ethics and patient privacy.

Solutions to the problems of modern medicine are impossible without the involvement of information technology, but it is in medicine that compromises with security are unacceptable. Managers of healthcare institutions should develop and regularly review internal regulations, pay attention to staff training, and create a culture of responsibility for the digital footprints we leave when providing medical care [17]. Such an approach will preserve the benefits of personal gadgets and minimize potential legal and ethical conflicts.

The role of mobile technology in healthcare will continue to grow in the coming years, with new applications emerging for diagnostics, monitoring and clinical solution support. The development of 5G and cloud platforms makes it possible to share medical data in real time, which is especially relevant for telemedicine. However, coordinated efforts by lawmakers, technology companies, medical communities, and advocacy organizations are needed to make these perspectives happen safely. International collaborations, such as WHO and European Commission working groups and participation in scientific consortia, can help to establish universal standards for digital security and protect patients' rights [24].

Working together will not only avoid regulatory duplication, but also facilitate cross-border collaboration in the exchange of health information. For healthcare providers, this means that personal gadgets will increasingly become an important part of everyday practice in the foreseeable future, but with clear rules and a high level of risk awareness. This is the only way to balance innovation and patient protection, creating a solid foundation for the further development of digital medicine.

Conclusions. The digitalization of medicine and the use of personal gadgets by medical professionals have become an inevitable part of modern healthcare. Mobile technologies have great potential to improve the quality and accessibility of medical care, optimize diagnostic and treatment processes, and improve communication within medical teams. However, the widespread adoption of personal devices requires a systematic approach that balances innovation and safety.

For safe use of gadgets, it is necessary to develop and regularly update regulations, take into account national and international legal norms, and implement mobile device management (MDM) tools. It is equally important to foster a culture of digital risk awareness, which implies increasing digital literacy among healthcare professionals and training them in the basics of cybersecurity. This will minimize the likelihood of data breaches, breaches of patient privacy and legal consequences.

Further development of digital medicine requires standardisation of legislation, creation of international safety standards and active cooperation between government authorities, technology companies and professional communities. The development of technologies such as 5G and cloud platforms will open up new opportunities for diagnostics, monitoring and telemedicine, but only if ethical and legal principles are strictly adhered.

The joint efforts of all participants in this process will create a solid foundation for the further development of digital medicine, preserving the core values of healthcare – protecting patients' rights, their data and ensuring the quality of care.

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INTERNATIONAL STANDARDS ON ENSURING THE RIGHTS OF PRISONERS WITH PHYSICAL AND MENTAL DISABILITIES

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Summary

According to the authors, providing prisoners with physical and mental disabilities with adequate treatment and adequate medical care is of particular importance to ensure the health and safety of sick prisoners and of all others. Thus, they must be provided with the minimum security necessary to ensure their safe detention. Also, when assigning prisoners with disabilities, the risk of ill-treatment by other prisoners should be taken into account in order to ensure their protection.

Therefore, this category of convicts requires a special approach when interacting with them. The problem is that prison officials are not always psychologically prepared to solve these complex professional problems. In this challenging context, prison systems must develop and implement effective strategies to protect prisoners with mental and behavioral disabilities. It is essential to adopt a multidisciplinary approach, which includes continuous training of custody staff in the field of mental health and disabilities, improving their access to specialized mental health support and services, as well as implementing robust abuse reporting mechanisms designed to protect victims of violence.

Keywords: international standards, prisoners' rights, prison, physical disabilities, mental disabilities.

Introduction. Convicts with physical and mental disabilities represent a particularly vulnerable group. Despite the introduction of international provisions and rules regarding this category of convicts into national legislation, the practice of their implementation demonstrates the difficulties that persons from this category face in everyday life in places of detention.

Within the context of international legal instruments, the issue of prisoners with disabilities is linked to their various physical limitations, which create a particular sensitivity to violence, discrimination, exploitation and inadequate conditions of detention. In addition, prisoners with disabilities may feel "inferior" to other prisoners because they cannot work or perform certain types of work and have difficulties with movement and care. People with disabilities may also face basic neglect from those around them due to their medical and psychological difficulties.

Thus, the problems faced by these people in society are amplified in the penitentiary environment, as it cannot adequately respond to their needs. In this regard, society's attention should focus on cases of discrimination against prisoners with disabilities, paying particular attention to the way the penitentiary, with its closed environment, is adapted to their special needs.

Methods and materials applied. Within the study limits of this article, the following methods were applied: analysis, synthesis, comparison and logical awareness. The materials used are the publications of scholars in the field.

Discussions and results obtained. According to the *Convention on the Rights of Persons with Disabilities*, persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which, in interaction with various barriers, may hinder their full and effective participation in society on an equal basis with others [1, Art.1].

As mentioned in the Manual for the Treatment of Prisoners with Special Needs, the problems faced by people with disabilities in the community are often exacerbated in prisons due to the specifics of the closed and restricted environment and the violence resulting from prison overcrowding and the lack of an adequate system of differentiation between prisoners and their appropriate supervision [2, p.104]. Therefore, any physical or other disabilities must be analyzed and taken into account during the placement and assessment process, when making classification decisions, and in the overall analysis of the case.

The detention of physically disabled, sick and elderly people in prison raises a whole range of problems. Due to their physical limitations, these prisoners are particularly vulnerable to violence, discrimination, exploitation and harsh conditions of detention. Physical problems and limitations can affect their ability to follow routine procedures and meet the normal demands of prison. Sometimes the elderly, sick, and disabled are prevented from participating in physical exercise and other activities due to a lack of adequate facilities. Sometimes their medical or psychological problems are left unnoticed [3, p.40].

Persons with physical disabilities (especially those with long-term disabilities) may face various obstacles that prevent them from being on an equal level with other prisoners. It is also important to ensure that laws and procedures are in place to ensure that persons accused of or convicted of a crime are not discriminated against on the basis of their physical disability. Increased attention is paid to physical disability in places of detention due to the existing closed and restricted environment [4, p.65].

Like all prisoners, persons with disabilities must be provided with the minimum security necessary to ensure their safe detention.

Prisoners with physical disabilities should be placed in accommodation that is appropriate to their needs. Where necessary, accommodation should be modified to help prisoners adapt to new conditions. For example, cells can have handrails, steps can be brightly colored and marked to make them visible to people with visual impairments, and portable ramps can be used to facilitate access for wheelchair users. It is necessary to ensure unhindered access to health services [5, p.51].

When assigning prisoners with disabilities, the risk of ill-treatment by other prisoners should be taken into account to ensure their protection.

As regards assessment, then upon placement in prison, where possible, impediments to the prisoner's participation in its implementation should be revealed. The identifica-

tion of these problems should be part of the assessment of pressing needs. Along with this, it is necessary to develop strategies to resolve them. For example, if there are forms or questionnaires that need to be completed by prisoners, people with visual or motor impairments will need the assistance of a staff representative to read their questions and record their answers, or a computer system capable of handling such tasks. Similarly, if a person has a mental disorder, an attempt should be made to simplify questions and provide repetition, if necessary [6, p.35].

With regard to classification and allocation, it is essential that prisoners with disabilities are placed in conditions that meet their needs and protect them from victimization by other prisoners. Prisoners should be allowed to carry any assistive devices relevant to their disability (e.g. wheelchairs and crutches), unless there are exceptional reasons for prohibiting them for security reasons. Where a particular risk is identified, an appropriate alternative should be provided [5].

The structure and architecture of the place of detention may also make it difficult for prisoners with reduced mobility to access dining rooms, toilets, recreation and visiting facilities. Prisoners with visual impairments may not be able to read personal correspondence or prison rules and regulations unless they are assisted or the material is presented in Braille. Prisoners with hearing or speech impairments may be denied interpreter services and may be unable to participate in various activities.

In short, to ensure equal treatment of prisoners with disabilities and protect their fundamental rights, prison authorities must have special policies and strategies that will address the needs of this vulnerable group. These policies must address as a priority issues such as staff training, classification, accommodation, medical care, access to programs and services, safety, etc. [4, p.66].

Prison authorities should carefully consider the need to detain elderly, sick and disabled people. When such people are imprisoned, special measures should be taken to ensure that their specific physical and mental health needs are met, particularly those related to memory loss, which may affect the appeal process. These prisoners need additional protection from prison staff to ensure that they are not abused by other prisoners. Creating an atmosphere of mutual respect and tolerance will allow these prisoners to live in a safe and healthy environment [3, p.40].

Furthermore, in order to overcome the problems faced by prisoners with disabilities, the following recommendations can be highlighted:

– Facilitating access for people with disabilities to the devices they need, such as: wheelchairs, crutches, braces, hearing aids, glasses, etc.;

– Ensuring access for prisoners with disabilities to all activities and programs in the prison, including education and vocational training and recreation;

– Collaborating with relevant civil society organizations working with people with disabilities to implement programs that meet the needs of prisoners with disabilities;

- placing information about organizations that provide assistance to people with disabilities in places accessible to prisoners, as well as distributing information brochures (in accessible format) to prisoners with disabilities upon placement in detention.

Prisoners with mental disabilities. Health services in penitentiary institutions have been a constant concern for national, regional and international human rights mechanisms and in most cases, their concerns coincide. Recommendations on improving prisoners' access to medical, mental health and psychosocial services have been repeatedly

addressed to the Government of the Republic of Moldova [7].

In many prison systems, a significant number of prisoners suffer from various mental disorders. Many prisoners had psychological problems before being placed in prison. Others, especially those sentenced to life imprisonment or long-term imprisonment, developed mental disorders during detention, as a reaction to the stress caused by the prison environment. These problems are aggravated by the lack of adequate treatment and assistance programs in prisons [3, p.38].

Global data consistently indicate that a significant number of prisoners suffer from serious mental disorders. According to the World Health Organization [8], prevalence studies in many countries have shown that 10-15% of the prison population suffers from severe and persistent mental illness, including mental disorders such as schizophrenia and bipolar disorder. Mental disorders often coexist with other health problems, such as substance abuse. Mental health and substance use disorders are even more prevalent among female prisoners: available evidence suggests that prevalence rates for this group are at least four times higher than for the general population as a whole. Both North American and European data indicate that approximately 75% of women in prison suffer from substance use disorders [9].

According to information provided by the Medical Department of the National Penitentiary Administration, "mental disorders occupy the first or second place in the morbidity structure, with approximately 3.000 diagnoses recorded annually. This figure must be evaluated in relation to the total number of people in detention: in 2022 – 6.084 people, and in 2023 – 5695 people" [7].

Despite the fact that the penitentiary system provides outpatient services in the medical departments of each penitentiary, inpatient medical services in Penitentiary No.16 – Pruncul, and outpatient medical services under contracts provided by the Clinical Psychiatric Hospital and the Balti Psychiatric Hospital, there are significant gaps in the approach and treatment of prisoners [7].

Mental abnormalities are a factor that negatively influences the behavior of the convicted person, aggravating his tendency to various types of deviations, complicating the processes of resocialization and social adaptation. Therefore, this category of convicts requires a special approach when interacting with them. The problem is that the employees of places of detention are not always psychologically prepared to solve these complex professional problems. In most cases, without having special knowledge and skills, employees treat prisoners with personality disorders in the same way as everyone else, without taking into account their characteristics. As a result, the operational situation in the place of detention becomes more complicated, the number of crimes committed by convicts with mental disorders increases, and the effect of the influence of resocialization decreases.

In this challenging context, prison systems must develop and implement effective strategies to protect prisoners with mental and behavioral disabilities. It is essential to adopt a multidisciplinary approach, which includes continuous training of custody staff in the field of mental health and disabilities, improving their access to specialized mental health support and services, as well as implementing robust abuse reporting mechanisms designed to protect victims of violence. It is clear that increased investment in human and financial resources is crucial to improving conditions in the prison system, ensuring adequate care and respect for the fundamental rights of people with mental disorders.

Reforms in this regard would not only improve the quality of life of affected prisoners, but would also contribute to reducing recidivism and their reintegration into society after release [7].

It should be noted that any mistreatment of prisoners with mental disorders, any failure to comply with relevant norms and standards, as well as violation of prisoners' rights regarding mental health and treatment of mental disorders constitutes a violation of Article 3 of the European Convention on Human Rights [10], according to which: "No one shall be subjected to torture or to inhuman or degrading treatment or punishment".

In this regard, the case law of the European Court of Human Rights can be exemplified. Thus, in the *case of* Ţîcu *v. Romania* [11], the applicant, who had delays in physical and mental development, complained about the poor conditions in the prisons where he was held, in particular due to overcrowding. The Court held that there had been a violation of Article 3 of the Convention because the conditions of detention in prison were not suitable for any prisoner with medical conditions such as the applicant, who should be provided with appropriate medical care and assistance in a specialized residential institution.

The Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care state: "All persons with or perceived to have a mental disorder have the right to be treated with humanity and with respect for their inherent human dignity [12, para.(2)]. All persons with or perceived to have mental disabilities have the right to protection from economic, sexual and other forms of exploitation, physical or other forms of violence and degrading treatment [12, para.(3)].

The United Nations Standard Minimum Rules for the Treatment of Prisoners (*Nelson Mandela Rules*) also provide that persons with mental disabilities should not be detained in prison and that "prisoners suffering from other mental illnesses or disabilities should be monitored and treated in special institutions under the supervision of doctors [13, rule 82-83].

Mental illness refers to various forms of disorders that affect the ability to think or act correctly. Severe mental illness involves significant disturbances in thinking or mood that affect behavior, reasoning, awareness, or the way to cope with the needs of daily life and is characterized by pain or disability. The most common forms of mental disorders are anxiety, depression, schizophrenia, and suicidal tendencies [3, p.38].

People with mental retardation have below-average intellectual abilities and understand or perceive the reality around them differently than other people. Prison staff often treats this category of prisoners in the same way as people with mental illness, although their problems are completely different and require different solutions. People with mental retardation tend to have difficulty performing everyday tasks. Mental illness, in turn, involves disorders of thought or mood that affect judgment, behavior, the ability to understand reality, and cope with the demands of everyday life [3, p.38].

Mental disabilities encompass a wide range of profoundly different conditions. They are distinguished by their different causes and effects, in particular the way in which a prisoner's right to health should be interpreted and implemented. These differences have essential relevance for the way in which such a prisoner should be treated, including the implementation of any security measures [4, p.62].

Thus, whenever possible, a distinction should be made between prisoners with:

– Intellectual disabilities (including persons with mental retardation);

– Mental illnesses (such as affective, psychotic or neurotic disorders);

– Mental and behavioral disorders due to the use of psychoactive substances;
– Personality disorders [4, p.62].

In this regard, prison staff needs to have an understanding of mental health issues in order to be able to identify problems and difficulties as they arise. They play a crucial role in the early identification of prisoners with mental health problems. They need to be able to distinguish prisoners with mental illness from prisoners with intellectual disabilities. For both categories of prisoners, the prison environment is often a source of increased stress. This can exacerbate an existing mental illness or cause it to develop. In addition, people with mental retardation are likely to suffer abuse and mistreatment in prison which will make their lives even more difficult. In this regard, the behavior of prison staff and the prison environment are important factors in maintaining the mental health of prisoners and can contribute to reducing the stress and anxiety caused by imprisonment. Prison staff has a responsibility to protect both groups of prisoners from abuse and to create an environment that is conducive to working with people with mental health problems and their rehabilitation [3, p.38].

The treatment of prisoners with intellectual disabilities should be based on providing a safe and secure environment, preferably by separating them from other prisoners, because people with mental retardation are at greater risk of exploitation and physical or sexual abuse. Adaptive behavior is always impaired, but in protected social environments where support is provided, this impairment may not be at all evident in subjects with mild mental retardation [4, p.63].

The process of health screening on admission to prison (the first 24 hours of admission are the most risky) and subsequent assessments at regular intervals are key components of self-harm and suicide prevention strategies. Training of staff in mental health, which includes risk assessment and prevention, is essential. In short, mental health promotion in prisons should be a key element of prison management and health care policies [4, p.65].

At the national level, among the basic problems revealed in this area are the following:

– Incidence of mental disorders combined with systemic problems;
– Increased prevalence of mental disorders in detention;
– Vulnerability and dangers of violence for detainees with disabilities or mental disorders;
– Poor medical infrastructure;
– Insufficient budget;
– Acute shortage of specialists [7].

Dealing with prisoners suffering from mental disorders is a challenge for any prison system. However, early identification and provision of appropriate mental health services are essential to meet the special needs of these individuals. For this reason, the assessment and classification of prisoners should include, at a minimum, a process of screening and identification of those with serious mental health problems and those at risk of suicide and self-harm, which should be carried out as soon as possible after their placement in the appropriate institution. These prisoners may be particularly vulnerable to victimization in ordinary prison environments or, conversely, pose a risk to prison staff and other prisoners due to behaviors associated with their condition. In view of the above, especially in the case of serious mental disorders, the needs of these individuals should, where

possible, be met in specialized psychiatric or medical units or facilities, where qualified doctors can conduct an examination, assess the situation and provide treatment [6, p.34].

In this regard, the Committee for the Prevention of Torture (CPT) has found that "a mentally ill prisoner should be accommodated and cared for in a hospital unit with sufficient equipment and suitably trained staff. Such an institution could be an ordinary psychiatric hospital or a specially equipped psychiatric institution within the prison system" [14]. The treatment of a mentally unstable and violent patient should be carried out under close supervision, with the provision of medical care and, if deemed necessary, in combination with the use of sedatives.

The use of physical restraint should only be justified in rare circumstances and, where such measures are proposed, should always be at the direct request of a physician or with his/her approval. The means of physical restraint should be removed as soon as possible. All instances of the use of physical restraint should be recorded in writing [14].

According to the *United Nations Standard Minimum Rules for the Treatment of Prisoners* (*Nelson Mandela Rules*), prison staff must undergo, before entering service, a course of general and special training based on contemporary evidence-based best practices in criminal science. Only candidates who have successfully passed the theoretical and practical tests after completing the training will be allowed to enter service. In this regard, training must also include training in the field of first aid, the psychological needs of prisoners and the corresponding dynamics in the prison environment, as well as medical care and assistance, including early detection of mental health problems [13, rule 76].

Every prison must have a health care service responsible for the assessment, promotion, protection and improvement of the physical and mental health of prisoners, with particular attention being paid to prisoners with special health care needs or with health problems that hinder their rehabilitation. The health care service must include an interdisciplinary team with sufficient qualified personnel, acting independently and having sufficient experience in psychology and psychiatry [13, rule 25].

Every prison shall also have at least one qualified medical officer, who shall have knowledge of psychiatry. The medical service shall be organized in close conjunction with the general administration of the community or National Health Service. It shall include a psychiatric service for the diagnosis and, where appropriate, the treatment of cases of mental deficiency [13, rule 22].

According to the recommendations of experts in the field, "it is imperative to intensify efforts to improve access to mental health services, develop comprehensive education and awareness programs to combat stigma, and invest significantly in the training and development of mental health professionals". Close collaboration between healthcare institutions is essential to create a robust support system capable of responding effectively and promptly to the complex needs of people affected by mental and behavioral disorders. Immediate and coordinated action is crucial to transform these alarming statistics and significantly improve the quality of life for all citizens" [7].

Conclusions. Therefore, each case of detention of persons with disabilities and those suffering from serious illnesses, as well as their placement in places of detention, requires special attention and an individual approach. This is especially true for the creation of conditions for maintaining health, respecting the dignity of a person who is already limited in their capabilities, which is perceived by them especially acutely. One of the most important tasks of detention facilities is to avoid harming the health of the person

during his temporary isolation from society. It is also important to remember that the health status of persons in detention is one of the most important indicators of respect for human rights in places of detention in general and for vulnerable groups in particular.

Under these conditions, convicts suffering from mental disorders constitute a special group in the general mass of convicts, who are very sensitive to the unfavorable factors of the penitentiary environment, poorly adapt to new conditions, are prone to exhibiting victimization traits or, on the contrary, manifest aggression and pose a threat to others. Consequently, this category of convicts requires special attention and a special approach from the staff of the detention institution.

Achieving the goal established by law of correcting convicts in the respective category and preventing the commission of new crimes is possible by solving a number of complex tasks, among which, of particular importance, are the following:

- Providing assistance to convicts in adapting to the conditions of the place of detention, as this process is difficult due to the vulnerability of their psyche to the unfavorable factors of the penitentiary environment;

– Preventing failures in the adaptation of a convict with a mental disorder, which lead to a deepening of the mental disorder and various types of deviations;

– Facilitating the process of integrating them into the convict community, preventing harassment and aggression by other convicts;

– Taking into account the characteristics of the convicted person's mental disorder in the process of involving him in work and socially useful activities;

– Individualization of educational work with the respective convicts depending on the nature of the mental anomaly;

– Constant monitoring and control of the behavior of convicts with mental disorders to prevent the commission of disciplinary offenses and criminal acts;

– Early identification of convicts with mental disorders and their referral to a specialist (psychologist, psychiatrist).

The practical component of the professional competence of an employee working with mentally ill convicts consists of the ability to apply knowledge in specific professional situations. In this context, the following skills are of particular importance:

– Determining the pathological mental state of the convicted person based on external signs;

– Predicting the behavior of a convict with a mental disorder and assess the degree of danger he poses to others and to himself;

– Conducting a constructive dialogue with the convicted person, taking into account his or her mental state and the type of mental disorder.

Consequently, the professional and psychological training of future employees of places of detention to work with convicts with mental abnormalities should be carried out by a wide range of specialists from various fields of scientific knowledge (in particular, clinical psychologists, psychiatrists).

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THE CRIME OF ILLEGAL OPERATIONS WITH NON-CASH PAYMENT INSTRUMENTS: CONSTITUTIVE ELEMENTS AND PRACTICAL ASPECTS

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Summary

This study addresses the essential aspects of Article 260[8] of the Criminal Code of the Republic of Moldova, introduced by Law No.136 of June 6, 2024, for the amendment of certain normative acts aimed at the criminal prevention of illegal operations involving non-cash payment instruments. In the context of rapid digitalization, where non-cash financial tools (bank cards, electronic wallets, virtual currency) are increasingly used, the legislation of the Republic of Moldova has updated its legal framework to respond to the challenges of modern financial crime. The provision criminalizes actions such as the fraudulent use of payment instruments, the unlawful possession of banking data, or the acceptance of transactions with a fraudulent nature, providing a clear legal basis for sanctioning offenses in the virtual environment.

At the same time, this paper highlights the role of virtual currencies in cross-border illicit activities such as money laundering or the financing of organized crime. By aligning with EU Directive 2019/713, the integrity of the payment system and the right to property are safeguarded, while traditional legal concepts are adapted to technological realities.

Likewise, the article analyzes the mechanisms through which the new legislation enhances the authorities' ability to prevent, investigate, and sanction digital financial fraud, marking an essential step in harmonizing national legislation with international standards of economic security.

Keywords: non-cash payment instruments, electronic money, virtual currency, cryptocurrencies, digital payments, bank cards.

Introduction. In the digital age, non-cash payment instruments have become ubiquitous, facilitating commercial and interpersonal transactions on a global scale. This technological and economic evolution, while bringing numerous benefits, also creates new vulnerabilities in the financial sphere. The exponential growth in the use of bank cards, online payment platforms, electronic money, and virtual currency has inevitably attracted sophisticated criminal activities aimed at exploiting security gaps and obtaining illicit material gains.

In this context, the need for a distinct criminalization of illegal operations involving non-cash payment instruments becomes evident. Aware of these realities, the national legislator introduced art. 260[8] into the Criminal Code of the Republic of Moldova, entitled "Illegal operations with non-cash payment instruments" [1]. This legal provision represents

a crucial tool in the fight against modern financial crime, aiming to protect the payment system, the legitimate holders of payment instruments, and economic stability in general.

Recognizing this legislative gap and the need to align with international standards in combating financial crime, the legislator introduced not only Art.260[8], but also Art.132[3] of the Criminal Code of the Republic of Moldova, which clearly defines the notion of "non-cash payment instrument" and its various forms (non-cash payment instrument, electronic payment instrument, electronic money, virtual currency). This prior and comprehensive definition is essential for the consistent and effective application of the new incriminating provision.

In a rapidly digitized era, in which financial transactions are increasingly shifting from the physical to the virtual space, contemporary society is confronted with new typologies of criminality. Non-cash payment instruments – bank cards, electronic wallets, virtual currencies – are no longer merely convenient modern tools, but are increasingly becoming targets or even means through which illicit acts are committed. The alarming rise in cyber fraud, particularly in the field of digital payments, has required a reassessment of the national legal framework and its harmonization with the trends and challenges identified at the international level.

The legislative response was not delayed. Through the introduction of Art.260[8] into the Criminal Code of the Republic of Moldova, the legislator established a new offense that sanctions illegal operations involving non-cash payment instruments.

Discussions and results obtained. Before the adoption of this provision, the legal framework in Moldova faced significant shortcomings in addressing electronic fraud. Offenses involving non-cash payment instruments were previously handled under general theft (Art.186 CC) or fraud (Art.190 CC), regulations that were inadequate for the specific nature of acts committed in the virtual space.

The adoption of this article comes in a tense international context, where cybercrime is becoming increasingly transnational, organized, and difficult to control through traditional criminal investigation methods. Recent reports confirm that fraud involving virtual currencies and non-cash payments ranks among the top emerging threats. According to TRM Labs, crypto transactions in 2024 reached a total of USD 10.6 trillion, of which USD 45 billion were linked to illicit activities – a decrease from 0.9% in 2023 to 0.4% in 2024 – yet still having a significant impact on global financial security [2].

INTERPOL has noted a rise in the use of virtual currencies for money laundering and organized crime financing, with increasingly sophisticated schemes involving crypto exchanges, anonymous digital wallets, and social media platforms used to recruit intermediaries (money mules) [3]. At the same time, the EUROPOL report – EU SOCTA 2025 – highlights that electronic payments have become the "new normal" for organized criminal groups, which increasingly exploit vulnerabilities in digital financial systems to carry out large-scale fraud [4]. Common methods include phishing, business email compromise (BEC), and the use of counterfeit cards across international networks.

According to the Annual Payment Fraud Intelligence Report: 2024, approximately 269 million card records and 1.9 million stolen bank checks were posted on dark web and clear web platforms in the United States in 2024. This growth reflects both the intensification of data breach incidents and the frequent reposting of compromised data. Notably, card-not-present (CNP) data predominated, underscoring the increasing impact of fraud in e-commerce [5].

Regarding financial losses, the Federal Trade Commission (FTC) reported that consumers lost over USD 12.5 billion to fraud in 2024 – a 25% increase compared to the previous year. Of this amount, USD 5.7 billion was linked to investment-related scams [6].

At the European level, the European Banking Authority (EBA) reported that in the first half of 2023, the total value of fraudulent credit transfers reached EUR 1.131 billion, while card fraud amounted to EUR 633 million. In terms of volume, 7.31 million fraudulent card transactions were recorded with cards issued in the EU/EEA during the same period [7].

Prior to the recent introduction of Articles 260^8 and 132^3 into the Criminal Code of the Republic of Moldova, the legal system faced major challenges in effectively criminalizing and sanctioning fraud involving non-cash payment instruments. This difficulty stemmed from the specific nature of electronic crime, which often does not align with classical offense patterns developed for a different socio-economic and technological context. Efforts to adapt traditional legal tools to the complex realities of electronic fraud led to numerous interpretative and practical limitations, highlighting the need for a specialized legislative approach.

The legal object of the offense provided for in Article 260^8 of the Criminal Code of the Republic of Moldova consists of a complex of social relations protected by criminal law. First of all, it concerns the social relations regarding the security and integrity of the non-cash payment system. This includes not only the physical existence of the infrastructure (networks, terminals, servers) but also all the complex mechanisms and procedures through which fund transfers, payments for goods and services, cash withdrawals, and other financial operations are carried out without the effective use of banknotes or coins. The non-cash payment system represents a vital and increasingly indispensable element of the modern economy, facilitating electronic commerce, investments, salary management, tax and duty payments, and a multitude of other essential economic activities. Ensuring its correct and efficient operation and, above all, protecting it against disruptions and abuses caused by criminal activities is therefore a major and legitimate concern of the legislator.

In a modern economy undergoing continuous digitalization, payment systems have experienced accelerated diversification, far exceeding the traditional model of cash transactions. Bank cards, electronic wallets, virtual currencies, and other forms of advanced payment have become not only viable alternatives but, in many contexts, preferred solutions for payments both in the physical and online environments. This technological evolution requires an adaptation of legal instruments, as well as a terminological clarification, in order to understand precisely which non-cash payment means are subject to criminal protection.

Moreover, Directive (EU) 2019/713 of the European Parliament and of the Council of 17 April 2019 on combating fraud and counterfeiting of non-cash means of payment emphasizes the importance of regulating and protecting these instruments. For example, point (13) of the Directive states that effective criminal law measures are essential to protect non-cash means of payment against fraud and counterfeiting. As underlined in this context, acts such as the collection and possession of payment instruments with the intention of committing fraud through methods such as phishing or skimming should be considered standalone offenses, without requiring the actual use of the fraudulent means of payment [8].

In addition, point (8) of the aforementioned Directive states that, the existence of

common definitions in the field of fraud and counterfeiting is essential for a coherent approach to its enforcement by the Member States. This includes the recognition of new types of non-cash payment instruments that allow the transfer of electronic money and virtual currencies, as well as the various elements that operate together, such as mobile payment applications and the corresponding authorizations (e.g., passwords) [8].

Thus, the connection between national and European legislation is essential for the effective regulation of cashless payment instruments and the fight against the associated frauds.

In this regard, Article 132^3 of the Criminal Code of the Republic of Moldova provides a fundamental definitional framework. A cashless payment instrument means a payment instrument, an electronic payment instrument, electronic money, or virtual currency. This framework definition encompasses the four specific forms described in the following paragraphs:

– By "cashless payment instrument" is meant a device, an object, or a record, which is protected, intangible or tangible, or a combination thereof, other than legal tender, and which, alone or together with a procedure or set of procedures, allows the holder or user to transfer money or monetary value, including through electronic money or virtual currency: debit/credit bank cards used daily at POS terminals or online; gift cards or prepaid vouchers (issued by companies such as Amazon, iTunes, Orange, etc.); social cards (e.g., food cards, electronic social vouchers used for paying essential products); smart bracelets with payment functions linked to bank accounts or applications; QR codes generated for payment in mobile applications.

– By "electronic payment instrument" is meant an instrument that allows cash withdrawals, loading and unloading of electronic money, as well as fund transfers other than those carried out by financial institutions: Revolut, Wise, Monese – (fintech applications authorized as payment institutions or electronic money issuers, not banks in the classic sense, although some have later obtained limited European banking licenses); mobile electronic POS terminals (used by delivery persons, small merchants); peer-to-peer applications (PayPal or Cash App); WebMoney (an older electronic payment platform used especially in the post-Soviet space, with a virtual wallet associated with various currencies).

– By "electronic money" is meant 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: monetary values in digital wallets such as Skrill, Neteller, Payeer; balances in gaming platforms (e.g., Robux, FIFA Coins, national lottery – purchased with real money and used in the virtual environment); values on public transport cards.

It is worth mentioning that WebMoney also operates as an electronic money issuer through its system of internally stored electronic units [9]. These are represented by codes such as WME (equivalent to the euro), WMZ (equivalent to the US dollar), WMR (equivalent to the ruble), WMU (equivalent to the hryvnia), etc., which can be used to make payments to other users or accepting merchants.

A "virtual currency" is understood as 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: cryptocurrencies such as Bitcoin, Ethereum, Litecoin, which operate in a decentralized system based on blockchain technology; stablecoins like USDT, USDC, DAI, which attempt to reduce value volatility by pegging to stable assets (e.g., the US dollar); non-fungible tokens (NFTs – unique digital assets traded on blockchain platforms and mainly used in digital art, gaming, or collectibles).

It is important to mention that Law No.308 of December 22, 2017, on preventing and combating money laundering and terrorist financing uses similar terminology, referring to the concept of "virtual asset" [10]. Although the name is slightly different, the definition is equivalent and allows the inclusion of modern forms of virtual currency, including NFTs, within the regulations regarding digital financial transactions.

Closely linked to the security of the payment system, the legal object of the offense also includes the property rights of legitimate holders over funds and payment instruments. This means that criminal law protects the right of individuals and legal entities to freely and unrestrictedly dispose of the money and payment instruments they own.

The material object of the offense provided by Art.260[8] of the Criminal Code of the Republic of Moldova differs depending on the specific form of the act described in paragraphs (1)-(3), and must be analyzed in close connection with the notions of cashless payment means and their forms, defined in Art.132[3] of the Criminal Code of the Republic of Moldova.

In the case of paragraphs (1) and (3), the material object is represented by the funds, monetary values, or money over which the criminal action is exercised – whether it is withdrawal, transfer, loading, or unloading. These funds can be expressed in the form of bank balances, electronic money, virtual currency, or other forms of digitized monetary value, being the goods actually affected by the act. Cashless payment instruments or electronic payment instruments – such as cards, applications, digital wallets, or identification data – in these cases have the role of means used to commit the offense, being used to access and transfer the aforementioned values, without constituting themselves the object of the action.

In contrast, paragraph (2) regulates the act of acquiring or possessing a cashless payment instrument and an electronic payment instrument obtained through a crime, which is acquired or held for fraudulent use. The criminal act directly targets possession of that instrument – whether it is a physical card, an electronic account, a seed phrase, a private key, or a set of access data. Also, insofar as possession or acquisition aims to access funds derived from a previous crime, those funds – money or other monetary values – also constitute material objects. Broadly speaking, the material object of this act includes any illegally appropriated cashless payment means, within the meaning of Art.132[3] of the Criminal Code of the Republic of Moldova – that is not only payment instruments, but also electronic money, virtual currencies, money, and monetary values accessed through them.

Closely related to the legal object of the offense – which aims to protect property and the integrity of modern payment systems – an analysis is required of the way in which this manifests itself through the perpetrator's behavior. Beyond the protected social value, the essence of the incrimination lies in the actual conduct that gives rise to the specific social danger. In this sense, the external dimension of the criminal act regulated by the paragraphs of Art.260[8] of the Criminal Code of the Republic of Moldova reflects what is known in doctrine as the objective side of the offense.

Essentially, the first paragraph of Art.260[8] of the Criminal Code of the Republic of Moldova sanctions a certain form of complicity or participation in fraud, focusing on the action of allowing or consenting to a financial transaction known to be tainted by illegality. This legal provision does not directly punish the person who initiates the fraud (for example, the one who uses a stolen card), but rather the person who, being in a position to prevent it, chooses to accept it, thereby facilitating the occurrence of the damage.

First, the central element is the action of "acceptance" of an operation. This term must be interpreted broadly, covering any manifestation of will, explicit or implicit, by which a person gives their consent for the transaction to be carried out. It is not just a formal agreement, expressed by a written or verbal declaration, but also any behavior that indicates consent. Thus, "acceptance" can take various forms:

a) A cashier who processes a card payment while knowing the card is counterfeit;

b) A bank employee who authorizes a fund transfer from an account they know is accessed illegally;

c) A system administrator who allows access to a virtual currency platform, knowing the user is not the legitimate owner.

What unites these examples is the idea that the person has the power and possibility to refuse the transaction but consciously chooses not to do so.

Second, the legal norm refers to specific types of financial operations:

Cash withdrawal: the action of releasing cash from an account, either via an ATM or bank teller;

Fund transfer: the electronic movement of money from one account to another, which may occur within the same financial institution or between different ones;

Loading or unloading electronic/virtual currency: funding or emptying an electronic wallet or virtual currency account, operations specific to new forms of digital money.

Third, it is essential for the incrimination that the operation is carried out illicitly. Paragraph (1) mentions two such modalities:

Use of a counterfeit payment instrument: this involves using an instrument (card, electronic device, etc.) that has been forged or altered to mislead regarding its authenticity;

Use of a payment instrument without the consent of the holder: this refers to a situation where the instrument is authentic but used by someone unauthorized (e.g., use of a stolen card or card data without the owner's permission).

A crucial element of the objective side is the perpetrator's knowledge of the illicit nature of the operation. This means the person must be aware that the payment instrument is counterfeit or used without consent. Knowledge can be direct (the person was explicitly informed) or indirect (it results from the obvious circumstances of the case).

Beyond incriminating the direct use of payment instruments, para.(2) of Art.260[8] CC RM addresses the preparatory phase of the offense, sanctioning actions by which criminals gain possession of these instruments. This paragraph moves away from incriminating the direct use of payment instruments and focuses on an earlier stage essential for committing fraud: the illicit obtaining of control over these instruments. Practically, the legislator punishes those who get hold of payment means, preparing the ground for their subsequent use for criminal purposes.

For example, consider a case where an offender obtains a stolen bank card from a residence. This person is not the original thief but receives the card knowing it was stolen.

The offender "acquires" physical control of the card with the clear intent to use it for purchases or cash withdrawals. This acquisition may be "for themselves" (intending personal use) or "for another" (intending to pass the card to an accomplice).

In another scenario, a person might possess a set of card data obtained through a cyber-attack. Although they did not participate in the hacking itself, they have received a list containing card numbers, CVV codes, and other information needed to perform online transactions. The person "holds" this data by storing it electronically, intending to use it for fraudulent purchases.

A similar example in the virtual currency domain is when an individual unlawfully gains possession of a seed phrase or private key linked to a crypto wallet. Even without personally stealing these credentials, the individual stores them electronically with the intent to access another person's digital funds. In legal terms, possessing these sensitive data without authorization is equivalent to unlawfully holding a payment instrument, triggering the application of para.(2) of Art.260^8 Criminal Code of the Republic of Moldova.

What unites these scenarios is that the person comes into possession of a "non-cash payment instrument" (card, authentication data, electronic wallet, etc.) knowing it was obtained through criminal means. The instrument is not legally acquired but has an illicit origin.

The crimes by which a payment instrument may be "acquired" vary. It could be theft (card stolen from a wallet), robbery (card taken by force), or even illegal access to a computer system (card data stolen from a database).

Para.(3) of Art. 260^8 CC RM differs from the previous provisions by criminalizing the consummation stage of the fraud, namely the actual execution of the criminal scheme. It is no longer only about possessing illicit instruments or facilitating others' access to them, but about carrying out an actual financial operation through fraudulent means. Essentially, this provision sanctions the unauthorized use of payment instruments.

To better understand this offense, it is necessary to analyze the legal modalities by which it may be committed. The central element is the action of "carrying out" a financial operation. This entails initiating and completing all procedural steps required to complete the transaction. The specific ways in which an operation may be "carried out" vary depending on its nature. For example, "carrying out" a cash withdrawal involves physically inserting a card into an ATM and following the steps necessary to obtain the money. In the case of a fund transfer, "carrying out" means initiating and electronically authorizing the transfer through a banking or payment IT system. Similarly, "carrying out" a payment or exchange of electronic or virtual currency involves using specialized software applications. The common feature of these actions is the active involvement of the perpetrator in executing the financial operation.

What renders the action of "carrying out" illicit is the use of the payment instrument without the consent of the rightful holder. This aspect constitutes the essential legal element. The absence of the holder's consent may take two main forms. First, it may concern the use of a non-cash or electronic payment instrument without the legitimate owner's approval, covering situations such as using a stolen, lost, or found card, or unauthorized access to an electronic wallet. Second, it may involve the unauthorized use of identification data enabling access to the payment instrument – such as PIN codes, passwords, biometric data, or, in the case of electronic or virtual currency wallets, specific authentication data like seed phrases (consisting of 12, 18, or 24 words), private keys, or other

security elements associated with blockchain systems, all used without the consent of the authorized person.

In this context, an additional but indispensable legal element is the absence of the holder's consent. For the criminal provision to apply, it is necessary to establish with certainty that the operation was carried out without the express, freely given consent of the person entitled to dispose of that payment instrument.

The place of committing the offense may be determined not only by where the perpetrator actually executed the fraudulent operation but also by where the victim suffered the effects of the damage, especially in cases where the act has a transnational character or is carried out through electronic means. If the victim is located in a different jurisdiction than the perpetrator, the place where the damage was effectively produced will be taken into account, such as the illegal withdrawal of funds from a bank account or the fraudulent use of a payment instrument. In such cases, the jurisdiction of judicial authorities may be established according to principles of private international law, and the act will be treated as committed in the location where the damage occurred. Additionally, international regulations may apply to cooperation between competent authorities from different states.

Regarding the time of committing the offense, it varies depending on the specific nature of the act:

• For the acceptance of a fraudulent transaction, the moment of the offense corresponds to the completion of the transaction processing by the person who consented to it (e.g., the cashier who approves payment with a counterfeit card);

• In the case of illicit acquisition or possession of payment means, the offense is considered committed at the moment of taking possession of the fraudulent instrument, even if it has not yet been used (e.g., receiving a stolen card or storing stolen authentication data);

• At the execution of fraudulent operations, the time is that of the technical completion of the transaction (e.g., withdrawing funds from an ATM, validating the transfer of cryptocurrencies).

This differentiation is essential for determining the temporal competence of the criminal law and the statute of limitations. For example, illegal possession of a bank card may be discovered months after acquisition, but the time of commission remains the moment of taking possession. In contrast, for fraud with a counterfeit card, the legal period starts from the date of its use. Thus, the time is not uniform but relates to each stage or manner of commission provided in the article, reflecting the complex dynamics of digital offenses.

Next, moving to the subjective side involves analyzing the perpetrator's guilt, which, in the analyzed offenses, is expressed in the form of intent. This means that the perpetrator acts with awareness of the illicit nature of their act and with the will to commit it. Negligence, characterized by a lack of foresight or carelessness, is not compatible with the nature of these offenses, which generally imply planning or deliberate action.

The form of intent may vary depending on the specific manner of committing the offense:

In the case of fraudulent acceptance of operations, the intent is direct. The perpetrator has a clear and precise understanding that the operation involves a falsified payment instrument or one used without the consent of the holder and nevertheless chooses

to accept it. They desire and aim to permit the completion of the fraudulent transaction.

In the case of illicit acquisition or possession of payment means, the intent is also direct. The essential element is the perpetrator's purpose. They must have the awareness that the payment means were obtained by committing an offense and act with the explicit aim to use it fraudulently. Mere acquisition or possession, without this purpose, does not constitute a crime.

In the case of fraudulent execution of operations, the intent is direct. The perpetrator is aware that they are using a payment instrument or identification data without the consent of the holder and intends to carry out the operation.

The purpose pursued by the perpetrator gains a defining importance in the content of para.(2) Art.260[8] of the Criminal Code of the Republic of Moldova, representing an indispensable element of the subjective side. In this scenario, neither the acquisition nor the possession of a cashless payment instrument is criminalized autonomously, but only to the extent that these acts are performed with the intention of fraudulent use, either for oneself or for another. Thus, criminal law does not sanction the mere fact of having or coming into possession of such a payment instrument, but only when this action is accompanied by the intention to use it illicitly, with the purpose of obtaining unjust material gain. This purpose expresses the internal will of the perpetrator and directly projects into the structure of the subjective side, conditioning the very typicality of the act provided for in para. (2).

By contrast, in the case of paragraphs (1), (3), as well as the aggravated forms regulated in paragraphs (4) and (5), the offense is consummated through the simple realization of the described action, without the need for the criminal investigation body to prove the existence of a specific purpose pursued by the active subject. In these situations, it is sufficient that the perpetrator acts with direct intent, knowing the illicit character of the instrument or the operation performed, without requiring the existence of a distinct purpose, such as obtaining material advantage.

Finally, the motive that caused the perpetrator to act, although not a constitutive element of the offense, may be relevant in individualizing the sentence. Motives may vary, from greed and the desire for quick enrichment to revenge or the necessity to cover debts.

Regarding the aggravating circumstances provided in paragraphs (4) and (5), these do not modify the form of guilt, which remains intent. However, they influence the degree of social danger of the act and, consequently, aggravate criminal liability. For example, committing the offense by an organized criminal group denotes meticulous planning and increased dangerousness, while causing large or especially large damages indicates significant material prejudice and serious harm to the victim's patrimony.

The active subject of the offense regulated in Art.260[8] of the Criminal Code of the Republic of Moldova can be both a natural person and a legal entity. In the case of natural persons, criminal liability intervenes when the act is committed by a person who has reached the age of 16 and who has the capacity to bear criminal responsibility according to the law.

Regarding legal entities, criminal liability applies when illegal acts are committed for the purpose of obtaining a benefit for the respective entity. In these cases, criminal responsibility does not depend on the individual actions of employees but on how the organization permits or encourages the commission of these acts, implying collective

responsibility. Thus, legal entities may be sanctioned for offenses committed by their representatives or by any other person related to their professional activity, insofar as these acts are carried out in the interest and for the benefit of the organization.

Conclusions. The adoption of Article 260[8] of the Criminal Code of the Republic of Moldova represents a defining moment in the evolution of the criminal legislative framework, highlighting the state's concern for updating legal norms in relation to new forms of crime generated by digital transformations. This regulation responds to the evolution of payment instruments and the diversification of methods through which fraud can be committed, providing authorities with a clear and coherent legal framework to effectively address new forms of financial crime.

The necessity of introducing this incrimination norm stems from the accelerated dynamics of cashless payment instruments, which have become ubiquitous in daily transactions and, consequently, vulnerable to fraudulent exploitation. In the absence of an explicit incrimination, authorities faced difficulties in legally qualifying certain acts that did not fit within the classic patterns of theft or fraud. Art.260[8] of the Criminal Code fills this gap and reflects a profound understanding of the new risks arising from the digitalization of financial services.

Besides offering a criminal mechanism to sanction these offenses, the article contributes to strengthening confidence in the modern payment infrastructure and protecting the participants in these systems. The careful wording of the legal content, including the delimitation of the legal and material object, as well as the objective and subjective elements, ensures clear and uniform application of the norm in judicial practice.

Overall, the introduction of Art.260[8] of the Criminal Code of the Republic of Moldova is not only timely but indispensable in a society where technology constantly redefines the way economic value circulates. This legislative intervention demonstrates a proactive and responsible approach by the legislator, contributing to strengthening the criminal law's capacity to respond to the complex challenges of the contemporary digital environment.

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PARALLEL FINANCIAL INVESTIGATIONS AS A TOOL FOR IDENTIFYING ASSETS SUBJECT TO SEIZURE

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Summary

Parallel financial investigations are a pivotal component in the fight against profit-driven crime. Their primary goal is the swift identification of illicitly acquired assets so that these can be frozen and, where appropriate, confiscated. This article analyses the legislative framework, judicial practice, and investigative techniques currently applied in the Republic of Moldova. To harmonise domestic law with European Union standards and international conventions, Moldova has introduced advanced legal instruments such as extended confiscation and a specialised asset-recovery agency (ARBI). Despite the large amounts of criminal assets placed under restraint – for instance, assets exceeding MDL 1.2 billion were seized in 2024 [1] – their ultimate confiscation remains limited, owing chiefly to protracted proceedings and evidentiary hurdles.

The study reviews key jurisprudence, including national rulings and European Court of Human Rights decisions (e.g., Telbis and Viziteu v. Romania, 2018), and presents notable case studies in asset recovery. It also outlines core investigative methods – from inter-institutional and cross-border cooperation to offender financial profiling – highlighting best practices and the need to strengthen financial-investigation capacity alongside conventional criminal prosecution. The findings underscore the importance of continued legislative alignment and an enhanced "follow-the-money" approach to secure effective recovery of crime proceeds within the examined legal framework.

Keywords: parallel financial investigations, asset seizure, extended confiscation, criminal-asset recovery, Agency for Recovery of Criminal Assets (ARBI), National Agency for the Management of Seized Assets (ANABI), international cooperation, money-laundering control.

Introduction. Organised crime and serious profit-driven offences compel justice systems to modernize their investigative tools so that asset-based sanctions become a central means of deterrence. Within this context, the concept of the *parallel financial investigation* has emerged as an indispensable component of criminal prosecution in cases of profit-motivated crime. A parallel financial investigation is carried out alongside the core criminal inquiry and focuses on tracing illicit financial flows and assets acquired through crime, enabling their swift restraint. Its ultimate purpose is to recover the proceeds of crime – either through special confiscation (of assets derived directly from, or used to commit, the offence), or through extended confiscation (of wealth that exceeds lawful income, under the conditions laid down by law) – and to compensate victims for the harm caused.

The need for parallel financial investigations is underscored by recent international developments. Both the United Nations Convention against Corruption (UNCAC, 2005) and Council of Europe conventions (e.g. the 1990 Convention on Money Laundering, and

the 1999 Criminal Law Convention on Corruption) require States to meet minimum standards for tracing, freezing and confiscating criminal assets. Likewise, Recommendation 30 of the Financial Action Task Force (FATF) compels States to ensure that their authorities can conduct financial inquiries in parallel with investigations into profit-generating offences. The European Union, through directives and regulations, has established a legal framework that facilitates the cross-border tracing and recovery of illicit assets, recognising that "follow-the-money" methods are essential in combating serious crime.

Against this backdrop, the Republic of Moldova – faced with corruption, money-laundering and tax-evasion phenomena – has undertaken significant reforms. These include amendments to the legislative framework (introducing parallel financial investigations into criminal procedure law, adopting extended confiscation provisions, and creating asset-recovery agencies), as well as institutional strengthening (the establishment of ARBI in 2017).

The present paper aims to analyse these developments. First, it outlines the relevant normative framework and explains how it permits parallel financial investigations. Second, it examines case-law and judicial practice – from domestic court decisions to key rulings of European jurisprudence – in order to highlight both achievements (successful cases of asset restraint and confiscation) and obstacles encountered. Third, it discusses the methods and techniques employed by the competent authorities in such investigations: inter-agency and international cooperation, use of financial intelligence (banking and tax data), profiling the financial behaviour of suspects, IT tools and networks such as CARIN, and so forth. Through this integrated analysis, the study seeks to identify best practices and to offer recommendations for making parallel financial investigations more effective, so that the confiscation of illicit assets becomes a concrete and frequent reality rather than merely a legislative aspiration.

Methods and materials applied. This research adopts an interdisciplinary and comparative methodology. It analyses relevant legislation from the Republic of Moldova and Romania (Criminal Codes, Codes of Criminal Procedure, and special statutes governing Asset-Recovery Agencies, together with secondary regulations) alongside the legal instruments adopted at European Union level (directives and regulations) concerning the freezing and confiscation of criminal assets. In addition, applicable international conventions and evaluation reports (such as MONEYVAL/FATF mutual-evaluation reports) were reviewed to understand the broader context and international standards.

The documentary research drew on both academic sources (peer-reviewed articles, studies in specialist journals, and conference proceedings) and practical legal materials (statutes, court judgments, and official press releases issued by relevant institutions). Particular attention was paid to well-publicised case studies and official reports on asset confiscation, in order to illustrate how parallel financial investigations are applied in practice.

The findings from the review of documents and cases are synthesised in the discussion and results section, which presents the key observations and offers critical interpretations. By triangulating legislative provisions, case-law and practical experience, the study endeavours to formulate well-documented conclusions and to propose potential improvements.

Discussion and results obtained. *I. Legislative Framework in the Republic of Moldova and the European Union.* In the Republic of Moldova, the notion of "*parallel financial in-*

vestigations" was expressly incorporated into the Criminal Procedure Code (CPC) in 2017. Article 6 point 20¹ of the CPC defines a parallel financial investigation as "the totality of criminal-procedural actions, special investigative measures, and/or measures provided under Law No.48/2017 on the Criminal-Asset Recovery Agency that are carried out for the purpose of gathering evidence concerning a suspect, accused person, civilly liable party, defendant, or convicted person, their property and the assets effectively owned by them, as well as the property of the owner and administrator of assets effectively owned by the suspect, accused person, civilly liable party, defendant, or convicted person, with a view to recovering criminal assets or identifying and tracing assets that are or may become subject to restraint and confiscation" [2].

In other words, the Moldovan legislature created a legal basis that allows criminal-investigation bodies, simultaneously with the inquiry into the underlying offence, to conduct an extended examination of the wealth of persons involved and of any assets that may be subject to seizure and confiscation. The CPC likewise stipulates in Article 229²(1) (introduced by Law No.49/2017) that the investigative body shall conduct parallel financial investigations in order to trace criminal assets and collect evidence in respect thereof [3].

To implement these provisions, the Republic of Moldova established a specialised body: the *Criminal-Asset Recovery Agency* (ARBI). ARBI was created by Law No.48 of 30 March 2017 [4] as an autonomous subdivision of the National Anticorruption Centre (CNA). Under that law, ARBI is mandated to carry out parallel financial investigations, draw up official records of their results, and apply restraint measures (seizure) to criminal assets under the CPC. The Agency is also responsible for administering and realising seized property, maintaining related records, and engaging in international cooperation (including information exchanges and negotiations for the repatriation of criminal assets). ARBI's creation formed part of Moldova's alignment with European standards, as Directive 2014/42/EU obliges Member States to maintain effective mechanisms for identifying and managing illicit assets; although Moldova is not an EU Member State, it has followed these trends through its agreements with the Union.

Beyond parallel financial investigations in criminal proceedings, Moldova has introduced "*extended confiscation*" and the offence of "*illicit enrichment*". Extended confiscation, set out in Article 106¹ of the Criminal Code (introduced in 2013), permits the confiscation of a convicted person's wealth that substantially exceeds lawful income where the person has committed certain serious offences. Coupled with parallel financial investigations, this measure provides the legal basis for confiscating assets that appear unconnected to the predicate offence but cannot be lawfully justified.

At the European Union level, the regulatory framework for identifying and freezing crime-derived assets has advanced significantly in recent years, serving as a benchmark for Member States and associated countries alike. Directive 2014/42/EU of the European Parliament and of the Council of 3 April 2014 on the freezing and confiscation of instrumentalities and proceeds of crime in the EU laid down binding minimum standards: all Member States must provide in their domestic law for extended confiscation, confiscation of assets transferred to third parties, and, in certain circumstances, confiscation without a prior conviction (non-conviction-based confiscation) [5]. The Directive also required the establishment of liaison officers or national asset-recovery structures – the well-known *Asset Recovery Offices* (AROs) – to facilitate domestic asset tracking and

cooperation with counterparts abroad. Member States were obliged to transpose these provisions by 2016; in the Republic of Moldova, ARBI was created in part on the model of such structures.

The EU subsequently adopted Regulation (EU) 2018/1805 on the mutual recognition of freezing and confiscation orders, directly applicable as of December 2020 [6]. This Regulation enables a seizure or confiscation order issued in one Member State to be recognised and executed directly in another, eliminating the cumbersome exequatur procedures of the past. The aim is to make cross-border asset tracking and freezing much faster and more effective – crucial in an era of global financial flows and offenders who shift assets across borders. The EU has also supported informal networks such as CARIN (established in 2004) and has integrated within Europol a specialised centre (EC3 – Financial Crime) that provides operational support to States in complex financial investigations.

More recently, in 2022, the European Commission proposed a new legislative package to strengthen asset recovery, including a *draft Directive on asset recovery and confiscation* (COM(2022) 245) [7]. The proposal seeks to expand the mandate of AROs (e.g., by granting them the power to impose short-term administrative freezes) and to broaden non-conviction-based confiscation procedures in situations such as the absence or absconding of the suspect. It would also make parallel financial investigations mandatory for certain serious offences at EU level, recognising their importance.

Overall, the EU provides a common framework that actively promotes this type of investigation by imposing results-oriented obligations concerning confiscation. Legislation is thus converging toward the desired objective: the proactive pursuit of criminal proceeds. The next section explores how these legislative developments have been reflected in practice and case-law.

II. Judicial Practice and Relevant Case-Law. The effective implementation of parallel financial investigations depends not only on the existence of statutory provisions but also on the willingness and ability of law-enforcement bodies and the courts to use them. An examination of practice in the Republic of Moldova reveals both progress and significant challenges.

Since parallel financial investigations were introduced in 2017, prosecutors and ARBI officers have launched hundreds of such inquiries in cases of corruption, money-laundering, smuggling, and other economic crimes. These efforts have resulted in the restraint of a remarkable volume of assets, including real estate, land, luxury cars, bank accounts, company shareholdings, and even crypto-currencies.

By way of illustration, in 2023 ARBI imposed seizure orders on 1,048 assets worth roughly MDL 1.9 billion – an increase on 2022 figures [8]. Many of these assets were linked to high-profile proceedings such as the banking fraud case popularly known as the "Billion Theft". On 13 April 2023 the Chisinau Court of Appeal convicted the principal defendant, Ilan Sor, in absentia, sentenced him to fifteen years' imprisonment, and ordered him to pay material damages exceeding MDL 5 billion [9]. The assets concerned – including bank and company shares, real property, and funds channelled to offshore jurisdictions – had been successively identified and frozen through parallel financial investigations conducted by prosecutors with the support of ARBI and international partners (including law-enforcement agencies in the jurisdictions to which the money had been transferred). The judgment – now at the enforcement stage, which requires international cooperation to secure actual recovery – is a landmark for Moldovan judicial practice, demonstrating

the capacity to trace and confiscate assets in complex financial-crime cases.

Yet Moldovan experience also exposes difficulties. The conversion rate from restraint to final confiscation is very low: only about 0.7 per cent of the value of ARBI-seized assets actually entered the State budget as confiscated property in 2018-2022 [10]. This points to a gap between assertive asset freezing and courtroom outcomes. Causes include delays during trial, the complexity of financial evidence, and occasional procedural ambiguity. For example, the Criminal Procedure Code does not spell out in detail how parallel financial investigations should be conducted, leaving room for divergent views on data collection, the rights of affected persons, and investigative limits. This lacuna was raised before the Constitutional Court. In Decision No. 11 of 26 January 2021, the Court examined the constitutionality of provisions on seizure and parallel financial inquiries, concluding that a proper balance between effective asset tracing and the protection of fundamental rights (such as property rights and the presumption of lawful acquisition) requires norms that are clear and foreseeable. Legislators were asked to specify the procedures, thereby offering adequate safeguards to persons whose property is targeted before final judgment. Amendments – likely to mirror practical experience and the Practical Guide to Parallel Financial Investigations issued by the Prosecutor General's Office in 2019 [11] – are expected.

In sum, Moldovan practice shows that prosecutors and ARBI actively employ the instrument, leading to the freezing of significant wealth. Final realization – definitive confiscation – depends, however, on the speed and quality of judicial proceedings. Ongoing reform seeks to accelerate procedures and remove ambiguities so that the proportion of assets ultimately confiscated rises substantially in the coming years.

A comparison with Romania shows that parallel financial investigations were driven mainly by the work of the National Anticorruption Directorate (DNA) and DIICOT (which combats organised crime), both of which embedded financial specialists in investigative teams. A 2013 Basel Institute report noted that Romanian authorities tended to focus on the criminal side of investigations and less on the financial dimension, urging that offenders' financial profiles become part of every serious-crime inquiry [12]. Mixed teams with dedicated financial investigators were recommended within the police and prosecution service. These recommendations were later implemented: DNA now has its own financial-analysis unit, and prosecutors routinely apply precautionary seizure in corruption and fraud files.

The impact is visible in numerous high-profile cases. Romanian courts have ordered substantial confiscations, including on the basis of extended confiscation. A telling example is the corruption case dubbed "Bribes at CFR", in which several former officials – including ex-Finance Minister Sebastian Vlădescu – were indicted for taking bribes. In first-instance proceedings in March 2022, the High Court of Cassation and Justice imposed sentences totaling thirty years' imprisonment on five defendants and ordered the confiscation of €10.5 million, assets that had been seized earlier by DNA prosecutors [13]. Confiscations involved sums running into millions of euros from each defendant (about €3 million from Vlădescu, €2.5 million from a former bank director, €1.66 million from an intermediary, etc.), corresponding to the bribes received. To secure recovery, DNA had already frozen a range of assets during the investigation: luxury apartments, houses, land, bank accounts, and equity holdings. In Vlădescu's case, two apartments, a duplex, a house, land, garages, interests in fourteen firms, and receivables from third parties were

under seizure – practically his entire fortune. The case illustrates the modus operandi: an in-depth financial probe ran parallel to the criminal investigation so that, when judgment was delivered, the assets were already identified and frozen, ready for confiscation. These good practices are worth emulating by the competent authorities in Moldova.

Case-law has also confirmed the compatibility of such measures with human-rights standards. A key judgment is that of the European Court of Human Rights (ECtHR) in Telbis and Viziteu v. Romania (2018). Mr and Mrs Telbis and Viziteu complained that assets (bank accounts and property) had been confiscated in a corruption case against Mr Telbis although Mrs Telbis, the formal owner of some property, was not initially a party to the proceedings. The ECtHR examined whether Romanian procedures respected the right to a fair trial and property protection. The Court held that national law allowed bona-fide third parties to challenge restraint and confiscation measures and that the applicants had been able to present their case on appeal [11]. Accordingly, in its judgment of 26 June 2018 the ECtHR found no violation of Article 6 of the Convention (right to a fair trial) in the extended-confiscation procedure – implicitly confirming that confiscation mechanisms (including vis-à-vis third parties) comply with Convention standards provided sufficient procedural safeguards exist. Similar ECtHR rulings (e.g., Albanese v. Italy, 2016, concerning non-conviction-based confiscation of a mafia member's assets) have deemed such measures proportionate to the legitimate aim of combating serious crime.

Nevertheless, Romania also faces challenges. MONEYVAL and European Commission reports note that, despite progress, effective confiscation of criminal proceeds remains relatively modest compared with the scale of economic crime. MONEYVAL (2022) observes that Romania has enhanced its capacity to freeze, seize, and confiscate criminal income and actively applies these measures to the most common domestic offences. Confiscation is, however, still rare in other cases, and authorities should strengthen investigators' ability to conduct parallel financial inquiries, locate assets, and pursue recovery [14]. In other words, an official gap remains between legal potential and practical implementation – certain illicit assets escape identification or confiscation, particularly in human-trafficking and drug cases where the inquiry focuses on the predicate offence rather than the money trail.

One past constraint was the shortage of financial specialists in police and prosecution offices. The situation has improved in recent years through training and the creation of the financial-investigator role. The Romanian Police has set up economic-crime units that cooperate with prosecutors, and the Prosecutor General's Office organises joint teams – including experts from the National Agency for Fiscal Administration (ANAF). ANABI itself has launched capacity-building projects, e.g., training with foreign experts (from France, the United Kingdom) on the "follow-the-money" approach. International cooperation has also paid off: within the CARIN network, Romania has identified and repatriated assets hidden abroad (e.g., Romanian traffickers' villas and luxury cars in Spain or Italy, subsequently frozen).

An important recent development is the operationalisation of the *European Public Prosecutor's Office* (EPPO), in which Romania participates. EPPO investigates fraud involving EU funds, and in such inquiries – often featuring money diverted across several countries – parallel financial investigations are used intensively. For example, in 2025 EPPO Bucharest investigated a €9.5 million IT-funds fraud, gathering financial evidence in Cyprus, the Czech Republic, Malta, and even outside the EU (Monaco, the United States,

Ukraine) [15]. Funds were traced through bank accounts of shell companies with the help of OLAF and the authorities concerned, showing the efficiency of the new cooperation mechanisms. EPPO has announced that, if the defendants are convicted, asset confiscations and sizeable fines will follow (the companies involved risk confiscation and penalties of up to about €422,000). Such EPPO cases anticipate a unified European case-law in which financial investigation is integrated from the outset, regardless of borders, and they can serve as a model for domestic inquiries.

Synthesis. In both Moldova and Romania, judicial practice demonstrates the utility of parallel financial investigations: numerous assets have been identified and frozen, and courts have begun ordering substantial confiscations, thereby validating tools such as extended confiscation. National and European case-law has confirmed that these measures comply with fundamental rights, provided procedural safeguards are respected. However, challenges persist – slow proceedings, limited administrative capacity, and increasingly sophisticated asset-concealment methods. Bodies such as MONEYVAL thus urge authorities in both countries to intensify their efforts: money-laundering and recovery of criminal proceeds must be treated as priorities on a par with prosecution of the predicate offence. The next section will examine in detail the methodologies and techniques employed in parallel financial investigations, which are closely linked to the practical effectiveness discussed here.

III. Methods and techniques of financial investigation employed. The success of parallel financial investigations depends largely on the range of methods and tools available to investigators, and on the coordinated manner in which they are applied. This section surveys the main "follow-the-money" techniques used in the Republic of Moldova, many of them harmonised with European practice yet adapted to local circumstances.

Access to financial and economic information. The first crucial stage is the rapid collection of data on a suspect's assets and transactions. Prosecutors and investigators may query national databases such as: the Land and Cadaster Register; the Vehicle Registry; Shareholder Registers, and Tax and Banking Records. Mechanisms have been established for direct or expedited access to these data. ARBI officers, for example, can consult government databases and obtain information on a suspect's bank accounts within a short time. Romania, by transposing Directive (EU) 2019/1153, created an electronic Bank-Account Register at ANAF that shows all accounts held by a person at financial institutions – greatly facilitating investigators' work. These tools eliminate multiple requests and provide a quick overview of the suspect's estate: real property, vehicles, bank accounts, shareholdings, and so forth.

Analysis of financial flows and bank documents. Once the relevant bank accounts are identified, scrutinising them becomes essential. Financial teams obtain lengthy account statements – usually five to ten years back – to cover the likely period of offending and wealth accumulation. Forensic-accounting techniques track the money trail from incoming payments (e.g. bribes disguised as "contracts" with shell companies) to final destinations (asset purchases, transfers to foreign accounts, or relatives). Specialised software, such as IBM i2 Analyst's Notebook, helps detect patterns and visualise complex financial networks (e.g. chains of companies used for laundering). Supporting documents (contracts, invoices) are examined to expose fictitious transactions. Owing to the sheer data volume, certified accountants are often engaged to produce expert findings.

International cooperation in asset identification. Cross-border elements are in-

creasingly common as offenders stash wealth abroad. Moldovan authorities rely on judicial-cooperation instruments under the 1959 European Convention on Mutual Assistance and the UN Convention against Transnational Organised Crime. The ARO-CARIN network is pivotal: ARBI contact points communicate swiftly – formally and informally – with counterparts in Cyprus, Switzerland, the UK, the UAE, and others. In Russian-Laundromat-related money-laundering inquiry, ARBI worked with EU partners to trace offshore accounts and luxury apartments, securing foreign restraints worth millions. Europol frequently supports such efforts by facilitating Joint Investigation Teams (JITs); a 2020 Romania–Italy JIT under Eurojust dismantled a human-trafficking ring and simultaneously froze assets – bank accounts and Italian Real Estate – demonstrating the power of concerted financial investigation.

Special investigative techniques applied to the financial strand. In certain situations, investigators resort to covert methods. Undercover agents or collaborators embedded in financial-crime circles gather intelligence on laundering routes or asset locations. Operational surveillance – wire-tapping or tailing – may capture conversations about moving money or transferring property. Such techniques, authorised by a prosecutor or investigating judge, have been used in complex corruption cases: intercepted calls revealed plans to "shift the money from that account", prompting immediate freezing orders. Controlled money deliveries, carried out in cooperation with banks, allow real-time monitoring of suspect transactions. Financial-intelligence units (FIUs) add a preventive layer: they receive suspicious-transaction reports and can impose short-term administrative freezes (24-72 hours) pending referral to prosecutors, giving parallel investigations a critical head-start.

Asset profiling and identification of beneficial owners. A core analytical technique is constructing an asset profile for the suspect and close associates. Investigators list everything the suspect officially owns, then widen the circle to spouses, relatives, companies where the suspect is a shareholder or director, and possible proxies (nominees). Because offenders often place property in others' names, legislation (and EU directives) allows confiscation from third parties who knew – or ought to have known – the illicit origin. Establishing the beneficial owner is therefore vital: ARBI combines registry data with intelligence and open-source material (social media, investigative journalism) to uncover hidden links. If a luxury villa stands in a cousin's name but the cousin has no income and close ties to the suspect, investigators infer beneficial ownership by the suspect and seek a seizure order, shifting the burden to the court to clarify substantive ownership.

Domestic inter-institutional cooperation. An emerging best practice is the formation of national joint groups comprising prosecutors, police officers, anti-fraud experts, and tax inspectors. In Moldova, ARBI works with the Tax Service and the Financial-Intelligence Service to cross-match data for example, detecting large gaps between a civil servant's declared income and actual wealth (illicit-enrichment cases). In Romania, ANABI cooperates with ANAF to value assets and with the FIU (ONPCSB) to trace suspect transactions. Prosecutors can assemble mixed operational teams; in a VAT-evasion case, for instance, tax inspectors may reconstruct financial flows alongside criminal investigators. This integrated model provides multidisciplinary expertise and embodies the domestic application of the "follow-the-money" principle.

Realisation and management of seized property. Although not an investigative step per se, efficient management of seized assets is a technical necessity. Trials may last years,

during which assets can lose value (unused cars, perishable goods). ARBI may administer or even sell certain assets in advance – after owner consent or where deterioration is likely – depositing the proceeds in a special account. If the asset is later confiscated, the funds go to the State; if the defendant is acquitted, the equivalent value is returned, balancing interests. Rigorous, transparent procedures prevent depreciation and ensure that confiscated property retains value, making asset management an integral part of the recovery process.

Sensitivity to individual rights. Finally, all techniques must be balanced against procedural safeguards. Persons whose property is seized have the right to be notified and to challenge the measure; courts periodically review the justification. Third parties may contest if they claim rightful ownership or lack a link to the offence. Modern financial investigation respects such rights: when a joint bank account is blocked, investigators try to segregate the defendant's portion to avoid disproportionate harm to an uninvolved spouse. Another good practice is appointing seizure administrators (e.g., a court-appointed administrator or ANABI itself) when companies are charged, allowing legitimate business to continue under supervision and preserving value for employees and creditors. These measures uphold proportionality and protect the economy and bona-fide third parties.

The methods and techniques of parallel financial investigation are diverse and complementary from "hard" measures (bank-record examinations, financial searches, judicial cooperation) to "soft" approaches (data analytics, inter-agency collaboration). Moldovan authorities possess a toolkit capable of fulfilling their tasks, and experience shows that integrated use markedly increases the chances of asset recovery. Success, however, hinges on skilled personnel and institutional commitment: as experts stress, in profit-driven crime the financial investigation should take precedence, with traditional criminal investigation in a supporting role. Rapidly tracing money and assets often leads investigators to the perpetrators, whereas focusing solely on the offender may leave illicit gains unrecovered even after conviction. The techniques outlined above should therefore be regarded as an essential component of any modern, complex inquiry.

Conclusions. Parallel financial investigations have proven to be an indispensable tool in the arsenal of Moldovan criminal-justice authorities for effectively combating profit-driven crime. This analysis shows that, in recent years, the Republic of Moldova has made considerable progress by adopting the necessary legal framework and setting up dedicated institutions for the recovery of criminal assets, in line with practices promoted within the European Union.

From a legislative standpoint, Moldova now has laws that allow extended confiscation, early asset-freezing, and swift international cooperation. The concept of the parallel financial investigation is expressly embedded in national legislation, underscoring the priority given to asset tracing from the very outset of criminal proceedings. At EU level, Directive 2014/42/EU and Regulation 2018/1805 have established an ambitious common standard, encouraging states to treat asset recovery as a priority equal to holding offenders criminally liable.

Judicial practice confirms this, as the case studies discussed demonstrate that parallel financial investigations have led to the freezing of impressive fortunes, even in complex cross-border cases. Through ARBI, Moldova has seized assets worth billions of "lei", showing its ability to immobilise criminal benefits at an early stage. Domestic jurisprudence and ECtHR case-law (e.g. Telbis and Viziteu, 2018) have upheld the legality of such

measures, provided procedural rights are respected. Nonetheless, Moldova still faces challenges concerning the pace of proceedings and the conversion of restraints into final confiscations: to date, less than 1 % of frozen value has turned into confiscated property, indicating the need for faster trials and stronger financial evidence.

The study of methods and techniques underscores the importance of a proactive, integrated approach. Follow the money is no longer a slogan but an operational principle: financial inquiry must begin alongside the investigation of the offence itself. Experience shows that when resources – financial experts, data access, international cooperation – are committed, results follow quickly, from blocked foreign accounts to assets returned to victims. Technology and information-sharing have greatly enhanced these investigations, but procedural transparency, avenues of challenge, and careful asset management remain essential to maintain legal sustainability.

Comparing Moldova, Romania, and the EU reveals a broadly convergent and positive trajectory: a paradigm shift in law-enforcement whereby success is measured not only in convictions, but also in assets recovered. New EU initiatives will further reinforce this orientation and continue shaping reforms in Moldova.

Recommendations emerging from this analysis include:

• *Strengthening institutional capacity* – more specialised financial investigators, continuous training, and technological upgrades (integrated databases, analytical software).

• *Targeted legislative improvements* – clearer rules for parallel financial investigations (especially in Moldova) and streamlined confiscation procedures, potentially expanding non-conviction-based confiscation where suspects abscond, in line with the forthcoming EU directive.

• *Enhanced international cooperation* – full use of networks such as CARIN, EPPO mechanisms, and equitable sharing of confiscated assets to incentivise mutual assistance.

• *Multilateral handling of complex cases* – joint prosecutor–tax-police teams, nationally and internationally, to tackle both the offence and the profit simultaneously.

• *Transparency and social reuse* – publicising outcomes to reinforce confidence that "no one is above the law", and channeling confiscated assets into community projects or special funds to give visible effect to recovery efforts.

In summary, parallel financial investigations in the Republic of Moldova have matured from a theoretical concept into an established practice embedded within the European asset-recovery ecosystem. As legislation continues to align and operational capacity expands, depriving offenders of their illicit gains should become the rule rather than the exception – deterring future crime by removing its financial allure and enabling more effective redress of social harm, thereby reinforcing the rule of law in economic as well as legal terms.

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ASPECTS REGARDING THE GENERAL PREVENTION OF THEFTS

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Summary

The article analyzes the issue of theft prevention, focusing on special criminological measures and their role in reducing crime. It highlights three levels of prevention: general-social, special-criminological, and individual. General prevention aims to eliminate the social causes of crimes, such as economic instability. Special criminological prevention focuses on specific criminogenic factors and involves operational and investigative activities. Individual prevention targets individuals predisposed to criminal behavior. The author emphasizes the importance of applying the principle of inevitability of punishment, early detection of crimes, and the responsibility of law enforcement bodies. Gaps in theft investigations are mentioned, particularly – the insufficient involvement of all actors in the law enforcement system. The essential role of citizens' preventive behavior, as well as the media's role in informing the population, is discussed.

The article also highlights the crucial role of legal education, community involvement, and victimological approaches in preventing thefts. It proposes a complex, multisectoral approach that targets not only the punishment of offenders but also the elimination of conditions that favor thefts, with the goal of ensuring public safety, economic stability, and citizens' trust in authorities.

Keywords: theft, theft prevention, criminological prevention measures, victimology, important priorities, preventive influence, reduction, analysis.

Introduction. When analyzing the issue of preventing the theft, it is first necessary to define what is meant by preventive activity. Modern internal criminological literature provides many definitions of this activity. Most criminologists consider preventive activity as one of the means of social regulation of social relations aimed at eliminating the causes of crime, as an interaction of economic and social measures, educational, pedagogical, organizational, and legal measures, and as a combination of different levels of crime prevention. Crime prevention is a much more effective method of combating crime because legal and penal measures have a limited character [2, p.132-136].

Discussions and results obtained. The analysis of crime prevention definitions allows us to identify a number of common characteristics of this phenomenon. The content of crime prevention consists of the activity of the state (through its legislative, law enforcement, judicial bodies, and others) and society. This activity is multi-level and systemic and is aimed at achieving concrete goals – the elimination of causes and conditions of crime commission, accountability and punishment of individuals who have committed crimes.

Preventive activities are generally understood in both broad and narrow senses. In a broad sense, it is an activity aimed at preventing specific crimes, and in a narrow sense, it involves identifying the causes and conditions that contribute to the commission of crimes, identifying individuals prone to committing them, and taking necessary preven-

tive measures with them. All these form a single concept of "crime prevention".

Depending on the hierarchy of causes and conditions of crime, there are three main levels of crime prevention: general social, special-criminological, and individual [9, p.20-21].

General social crime prevention includes a set of socio-economic, political, legal, ideological, and organizational measures aimed at developing the economy, stabilizing the political situation in the country, improving the material living standards of the population, culture, and citizens' consciousness. These measures are aimed at solving general social problems and do not primarily aim at preventing crimes. However, by contributing to the elimination of the causes and conditions of crime, they play an extremely important role in combating crime. One of the main causes of thefts is socio-economic instability. In this regard, social measures of primary importance include those aimed at improving the socio-economic situation of citizens, ensuring economic stability, developing the social support system, developing the economy, developing infrastructure, eliminating inequalities in economic and social development, and supporting the increase of public welfare through the organization of sustainable and productive employment, and reducing unemployment.

However, by counteracting and objectively neutralizing the general causes and conditions of crime, the application of general social crime prevention measures creates a favorable environment for the prevention of theft at the criminological special and individual levels.

The special criminological level (criminological prevention) consists of targeted action against criminogenic factors associated with specific types and groups of criminal behavior. The goal of their application is, usually much more limited than that of general social measures, although in some cases they may take on significant dimensions and may cover, for example, entire branches of the national economy or extend to specific categories of people (minor offenders, recidivists, etc.). The objects of this prevention are both crime in general and its types, as well as specific crimes.

The elimination or neutralization of these complex causes and conditions of criminal behavior is achieved during the activities of relevant actors, for whom the preventive function represents the fulfillment of their professional tasks.

General social prevention and special criminological prevention are interconnected. By combating the general causes of crime, general social measures create a favorable environment for crime prevention at the special criminological level.

The individual level (individual prevention) includes activities related to specific individuals whose behavior conflicts with legal norms [8, p.154-155].

A systematic combination of general-social, special-criminal, and individual crime prevention measures, as mentioned above, can contribute to successfully combating common crimes such as theft from the property of others.

Special criminological prevention of theft from others' property represents a set of organizational and managerial measures, investigative and operative measures aimed at identifying, eliminating, or neutralizing factors that contribute to the commission of such crimes, as well as preventive and prophylactic impact on individuals inclined to commit them.

The most important direction of special prevention of theft of another person's property, prevention of self-determination (self-production) of these crimes, are meas-

ures aimed at ensuring the principle of the inevitability of criminal responsibility for the person guilty of committing the crime, complete detection (establishment) and disclosure of such crimes. It is not accidental that one of the criminological axioms states that impunity for criminals is the most favorable condition for the self-reproduction and multiplication of crimes. In support of the above, let us quote the words of one of the representatives of the classical school of criminal law, Cesare Beccaria, who in his scientific treatise "On crimes and punishments", wrote that the most effective means of deterring crime is not the cruelty of punishments, but their inevitability. "The certainty of punishment, even if moderate, will always have a stronger impact than the fear of a harsher punishment accompanied by the hope of impunity" [1, p.169].

However, it should be noted that the situation regarding the combating of hidden (naturally latent) and disguised (artificially latent) crimes, leaves much to be desired. As a result, a significant number of individuals guilty of committing thefts from others' property have remained unpunished, evading justice, which is a significant incentive for committing new similar crimes and other types, and creates an atmosphere in society that allows criminals to keep citizens – potential victims of crimes – in fear. Criminological studies indicate that official data on crime do not objectively reflect the criminological state in society [5].

Thus, analyzing various positions regarding crime prevention and the activity of law enforcement bodies in this field allows for the formulation of the following definition: crime prevention is a diversified, multi-dimensional, multi-level activity regulated by legal norms, carried out by state bodies, social organizations, economic entities, and individual citizens, with the aim of preventing the commission of crimes, including the elimination, weakening, or neutralization of the causes and conditions that generate them, preventing or minimizing their consequences, as well as exercising a corrective impact on individuals with illegal behavior.

Regarding impunity, it is worth mentioning that the detection rate for burglaries is about 35%. Most of these are crimes that are solved "in pursuit". If the perpetrator is not caught "in the act", it is very difficult to prove their guilt. In general, according to experts, it is a type of crime that is often solved not from crime to criminal, but from criminal to crime. If a burglar is caught at the crime scene, they often admit to committing other burglaries for which the investigation was previously suspended due to the unidentified perpetrators. Unfortunately, after the discovery of the crime, law enforcement can no longer assist the victims: their stolen goods have usually been sold by the criminals, and the money spent. The channels for selling stolen goods work very efficiently: within hours, items are sold at the fence.

Rarely does a thief keep their loot: after all, it is direct evidence against them. The above allows us to conclude that the timely detection of theft crimes is a very effective means of deterring the commission of new such crimes, thus significantly reducing their potential reproduction, including even moderating the theft of goods. Additionally, it has the potential to significantly increase public satisfaction with law enforcement.

The study of materials from criminal cases, analytical reports, and decisions from coordination meetings of law enforcement bodies in the Republic of Moldova, dedicated to issues of theft prevention, particularly theft of others' property, has allowed for the identification of a series of typical errors and omissions made during preliminary investigation and investigation in these types of cases, whose elimination, we believe, would

improve the situation with their disclosure, which would undoubtedly have a positive impact on their prevention.

Among the characteristic deficiencies inherent in investigating theft from others' property, we must include errors in the organization of detection (identification) of these crimes in a timely manner, which affects the opportunity to investigate and examine them and directly affects the effectiveness of subsequent operational and investigative actions. In some cases, the reasons for these errors in judgment may be victimogenic. For example, a victim of theft, not wanting to "make a scene" and considering the damage caused by the theft to be insignificant, does not report it to the authorities.

As is known, theft from others' property is committed secretly, under conditions of invisibility. Usually, appropriate conspiracy measures are taken, including leaving the crime scene secretly. All of this significantly increases the responsibility of law enforcement in ensuring the objectivity, completeness, and comprehensiveness of the crime's disclosure. The analysis of the practice of preventing thefts committed by organized criminal groups shows that such crimes can only be resolved through skilled and close cooperation, applying joint efforts of investigation, operational, and forensic units of law enforcement bodies.

The study also showed that in a number of criminal cases, when there is a clear lack of evidence regarding the guilt of the accused persons, the broad capabilities of operational and investigative services to search for new sources of evidence are rarely used. For example, in group theft cases, operational services often limit themselves to identifying one of the accomplices, usually the direct perpetrator of the theft, without taking the effort to search for their accomplices. At the same time, no appropriate measures are taken to identify the organizers and other participants in the criminal groups. The same applies when a minor, who is the author of a theft, acts under the instructions of an adult. Often, in such situations, there is a lack of professionalism both in proving the complicity in their actions and in qualifying the actions of an adult and holding them accountable for involving a minor in criminal activity [6, p.58-59].

In maintaining operational case files, especially cases of theft, it is necessary to make the most of "the informational capacities not only of the criminal investigation staff but also of other units of the internal affairs bodies" [7, p.166].

No doubt, without applying these measures, using only classic investigative techniques and methods of activity, or even by increasing the number of police officers, it is extremely difficult, if not impossible, to solve complex crimes committed under conditions of invisibility.

Another serious factor in the fight against theft of other people's property is people's behavior themselves, their lack of basic vigilance. This same opinion is shared by the police, who believe that a significant number of thefts, and especially home burglaries, are caused by the victims' own carelessness [4].

Meanwhile, to protect yourself and avoid becoming a victim, it is necessary to follow some fairly simple rules, most of which are aimed at preventing burglaries in apartments, as other types of theft are usually spontaneous actions based on the victims' mistakes. If possible, install bars on all glass structures (hardware, balconies, loggias). Metal shutters are effective for protection. The entrance doors to the staircase and apartment must close tightly. Whether you are at home or away, the door must always be locked. Never open the door without checking who is on the other side. Install resistant doors. The

door must open outward and be covered with metal, and the frame and door should be equipped with anti-demolition pins. There should be at least two locks, preferably of different systems. At least one of the locking devices should have a particularly strong pin. Equip the door with a chain, peephole, and bolt. Sometimes, it is useful to install a padlock that opens with a keychain. Install a metal door or one with bars on the platform. All exits to the attic, elevator room, and roof should have reliable hinges and locks. The staircase must be fully lit – during thefts thieves turn off the lights and use flashlights. Remove or ask family members, friends, or neighbors to take the mail out of the mailbox if you leave the apartment for a longer period. Neighbors with whom you have a good relationship should be asked to pay attention to the integrity of the apartment doors and leave contact phone numbers in case you need to call them. In cases of extended absence, install an automatic light-switching system or ask acquaintances to turn on the light in the apartment. Write down the serial numbers of your television, video, and audio equipment, valuable documents, and keep this list in a safe place. If possible, mark the most valuable items in the apartment with engraving or another method. Never leave the apartment keys under the doormat, on the electrical panel, in the mailbox, or in other conventional places, especially near the door. Analyze suspicious visits from unknown people and repeated calls to the landline. If possible, equip the staircase with surveillance cameras. Know that criminals frequently check if there are people at home by ringing the doorbell and asking questions. Notify the police about all suspicious visitors, people wandering aimlessly in the staircase, strangers taking objects from the building's hallway, and try to remember their physical features, their car's number, and provide this information to the arriving police team. Additionally, avoid buying items from unknown people, as they may be stolen.

The highest criminal activity in committing thefts is characteristic of the age group of 18-24 years, most of whom have no interest in work. The issue of fighting crime among youth has always been an important topic in criminology. The study of the personalities of young offenders who have committed thefts shows that there is a constant predominance of males over females in this group. However, preventing theft among young women is no less important than among men. Unemployment is one of the main criminogenic factors contributing to thefts by young people, and in this regard, it is necessary to actively utilize the potential of social protection bodies and employment services. Unfortunately, most young people who have reached adulthood and committed thefts did not have their own families at the time of committing the crime and did not intend to start one. Therefore, to achieve results in preventing crimes, it is necessary to carry out targeted and personalized work not only with single-parent and disadvantaged families but also with families that require special attention for objective reasons (e.g., families with many children, migrants, etc.). Recidivism among young people who have committed thefts is quite high, and from my personal experience, I can observe that every person in this age group, especially minors involved in thefts, has previously committed crimes of the same nature or has been drawn into such activities again in a short period.

It is necessary to develop a set of measures aimed at overcoming legal nihilism, which would include: educating respect for the legislation of the Republic of Moldova, which regulates various aspects of state and social life; informing the public about the state of legislation concerning criminal liability for thefts; widely promoting materials about individuals held responsible for committing thefts and the measures applied to them; promoting the measures developed by the state to prevent economic crimes

against property; providing information on legal ways to protect rights, including property rights; presenting positive results in preventing economic crimes against property and promoting statistical data on the number of discovered and solved thefts and robberies. A special role in achieving these tasks belongs to the juvenile divisions of the internal affairs bodies, which are among the subjects not only of preventing juvenile delinquency but also of the state's criminal policy in general. Therefore, for the efficiency of preventive activities, it is necessary to develop a system of additional financial incentives for employees involved in preventing economic crimes among young people.

An important role in preventing crime is promoting the ideology among young people of "prioritizing spiritual values over material ones", which aligns with the fundamental long-term interests of society and the state.

Victimological prevention is a component, a subsystem of the entire crime prevention process, and it should be emphasized that limiting the application of prevention tactics exclusively to individuals committing hidden thefts of others' property is not correct. This circumstance does not provide grounds for transferring all the blame for the crime from the thieves to the victims, but it is of significant importance for developing effective measures to prevent such crimes [3]. It is necessary to change the state's traditional approach not only regarding the issue of crime prevention through purely social and specialized prevention measures but also regarding the victimological behavior of potential crime victims, especially concerning their tendency towards materialistic actions.

As investigative practice shows, the incorrect and often provocative behavior of the victim is one of the causal factors in the genesis of an illegal act. It is assumed that the role of the victim in the genesis of a socially dangerous act is determined not only by their behavior but also by certain psychological traits.

Undoubtedly, the victim and the offender cannot be placed on the same level, but it is absolutely necessary to consider the victim's role in committing the crime. Here arises the question of taking these circumstances into account when determining the punishment for offenders. The term "provocation" is not used in legislation, either as a standalone crime or as an aggravating or mitigating circumstance.

From a criminal victimology perspective, provocation must be considered the inappropriate behavior of the victim that has generated a reaction from the perpetrator.

The mass media should be used as fully as possible in the system of theft prevention. Press publications, radio and television programs should be focused on preventing crimes with materialistic motivation. These are an effective means of victim-oriented prevention of thefts because they inform the population about the criminogenic situation in the country, the state and dynamics of analyzed crimes, methods used by criminals to enter victims' homes, channels for disposing of stolen goods, and possible means of protection against crime. The media must be systematically used both for educating citizens on victim prevention and for demonstrating the effective activities of law enforcement authorities in this area.

Considering the classification and typology of theft victims, it is important to inform the public about who most frequently becomes a victim of criminal activity and under what circumstances.

It is considered appropriate to prepare educational videos or video games (such as advertisements) that inform citizens about how not to become victims of thefts, how to behave in a criminogenic situation. A series of TV programs with the participation of

specialists from various fields (criminologists, sociologists, psychologists) should be prepared, addressing the issues of victim-oriented prevention of property crimes.

A significant preventive influence on potential victims of crimes can come from information not only about the criminal liability of thieves, but also about the punishment applied, the regime, and the detention rules for those sentenced in penitentiary institutions.

Increasing the intensity and effectiveness of special criminological prevention of theft of others' property requires the skilled use of financial resources allocated to combating crime.

An analysis of press materials and confidential conversations with law enforcement officers shows that one of the most effective means of protection against burglars is entering into a protection contract with companies providing security services.

More accessible preventive means of technical protection for homes include the installation of locks with enhanced security (preferably two) on entrance doors, the installation (reinforcement) of metal doors, and bars on windows and balconies.

However, the use of these and other technical means does not guarantee the absolute impossibility of theft in a particular apartment or other spaces, but it significantly reduces the risk of criminal intrusion.

Special criminological prevention of theft of others' property is not limited to the efficient functioning of security services. It is important to ensure the effectiveness and efficiency of all services and units of law enforcement agencies, especially the internal affairs agencies, which are somehow associated with preventing or suppressing theft, searching for thieves, and detaining them. In this regard, great responsibility lies with criminal investigation officers, sector officers, patrol officers, forensic experts, and investigators.

We believe it is important to emphasize the moments that highlight the importance of applying theft prevention measures, namely reducing the crime rate and increasing public safety. Thefts are crimes that have a direct impact on public perception of security. The higher the level of thefts is, the lower the citizens' trust in the legal order and security system. Adopting criminological measures helps reduce crime, creating an atmosphere of trust in the protection of citizens' rights and property.

One of the most important values in a rule of law state is the protection of citizens' property. Thefts violate this fundamental right, causing physical, material, and psychological suffering to victims. Criminological measures aim to restore public order, allowing citizens to feel protected and contributing to the preservation of personal and family well-being.

Theft, especially large-scale theft, causes significant economic damage to both private individuals and businesses, which can lead to increased security costs, higher prices, and a decrease in economic activity levels. The adoption of effective measures against theft contributes to the stability of the economy, reducing financial losses and creating conditions for business development, which is important for both small and large businesses.

When theft prevention measures are effective and systematically implemented, they contribute to the formation of a legal culture among citizens. Society begins to perceive crime as a serious violation of norms and standards, which in turn influences public morality. People begin to realize the consequences of their actions and show more respect

for the rights of others, leading to a reduction in law violations in general.

Large-scale thefts or frequent theft cases can generate social dissatisfaction and tension. The adoption of comprehensive anti-theft measures strengthens citizens' trust in state authorities and the rule of law. It also contributes to improving relations between the state and citizens, which is important for social peace and stability.

Effective theft prevention has a long-term effect, aiming to reduce the number of crimes in the future. When crime becomes less attractive to society, especially to young people, this leads to a decrease in the number of offenders, thus contributing to the formation of a safer and more stable social environment for future generations.

Conclusions. Therefore, we can conclude that, in order to improve the effectiveness of special criminological prevention of theft of others' property, as well as other types of crime, the full potential of cooperation and coordination of joint efforts by law enforcement agencies and their services to prevent crime is not yet sufficiently involved and utilized. If the necessity for such cooperation is recognized and mutual understanding is achieved between law enforcement bodies, we believe that in the long run, the situation will improve. First and foremost, this will enable the achievement of significant positive results in preventing theft of property.

At the same time, it should be remembered that relying solely on punitive, repressive police measures to prevent theft is both wrong and inefficient. This is the task of all authorities and local self-government bodies. Public associations, political parties, religious confessions, and other non-governmental organizations should play a significant role in addressing theft prevention. At the same time, solving the problem of property violations, especially theft, should become one of the important priorities of the state's modern social policy.

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CRIMINAL INVESTIGATION OF ADOLESCENTS IN CONFLICT WITH THE LAW: FORENSIC LANDMARKS IN THE CRIMINAL PROSECUTION PROCESS

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Summary

In the context of increasingly complex forms of juvenile delinquency, the criminal justice system in the Republic of Moldova faces the challenge of balancing the strict application of the law with the adequate protection of adolescents in legal conflict. This paper explores the particularities of criminal prosecution concerning youths in conflict with the law, from a forensic perspective, analyzing both the national and international legal frameworks, as well as relevant best practices. The study highlights current gaps and limitations in criminal proceedings, especially regarding the interrogation of minors, pre-trial detention conditions, and the right to legal representation.

Beyond the legal aspects, the article also integrates psychosocial factors, such as family structure, the impact of parental migration, and the heightened vulnerability of adolescents. Specific proposals are made to adjust criminal procedures to the cognitive and emotional realities of young individuals, emphasizing the importance of a multidisciplinary approach. Ultimately, the study advocates for strengthening a child-friendly justice system, grounded in prevention, rehabilitation, and social inclusion, while underlining the need for continuous training of professionals involved in juvenile criminal investigations.

Keywords: juvenile justice, adolescents, criminal prosecution, forensic science, interrogation, child rights, prevention, rehabilitation, legal protection, social vulnerability.

Introduction. This paper aims to investigate, from a criminological perspective, the complexity of juvenile delinquency, focusing on how this phenomenon is addressed by the criminal justice system in the Republic of Moldova. The existence of a national plan for the prevention of juvenile delinquency represents a key indicator of the state's commitment to protecting the best interests of the child and of the functionality of the institutional mechanisms involved. The analysis will cover both the interpretation of statistical data on offenses committed by minors and the identification of causal factors that contribute to the emergence of deviant behavior. Such an approach allows for a deeper understanding of the social context, while also serving as a basis for public policies and legislative initiatives oriented toward prevention and early intervention. Particular attention will be given to the psychological dimension of juvenile offending, which requires a distinct approach from that applied to adult criminality.

The effective resolution of criminal cases involving minors presupposes a rigorous understanding of the genesis of delinquent behavior, and the proposed solutions must be grounded in thorough psychological assessments. The involvement of specialists in child psychology, the analysis of personality traits, and the development of strategies for social and emotional rehabilitation must constitute central elements in the efforts to combat youth delinquency. Cases involving minors raise challenges that cannot be resolved solely through legal means. They require a multidisciplinary approach that integrates the legal component with social, educational, and human aspects. This intersection between legal norms and individual vulnerability calls for a rethinking of the traditional model of law enforcement in favor of a criminal justice system that is more responsive and adapted to adolescents. The complexity of such cases stems from the need to harmonize the requirements of legality and public safety with the obligation to protect the fundamental rights of minors.

Therefore, criminal prosecution should not be regarded as a rigid procedure, but as a balanced intervention governed by ethical responsibility and adaptability. Considering the cognitive and emotional developmental particularities of adolescents, every stage of the criminal process – from hearings and detention to the determination of sanctioning measures – must be calibrated to the minor's ability to comprehend legal implications and to reintegrate into society.

This research aims to provide a critical assessment of the normative framework and current judicial practices in the Republic of Moldova, with a special focus on the system's ability to meet the specific requirements of juvenile justice. In addition, functional models from other countries will be examined to extract viable solutions that can be adapted to the national context. Through this integrative approach, the article seeks to contribute to the strengthening of a criminal justice system focused on protection, fairness, and efficiency in handling cases involving minors in conflict with the law.

Methods and materials applied. The study is grounded in an integrated approach that combines the analysis of the normative framework with doctrinal review and relevant case law, employing recognized legal research methods such as analysis, synthesis, deduction, and the historical method, complemented by comparative perspective and systemic approach. These methods are applied with the aim of identifying gaps and the reform potential of the juvenile justice system, with a particular focus on its compatibility with international standards and the actual needs of children in conflict with the law.

Discussions and results obtained. International legal instruments represent essential pillars in the architecture of child protection within criminal justice proceedings. Among the most significant is the United Nations Convention on the Rights of the Child, adopted on 20 November 1989 and ratified by the Republic of Moldova in 1993.

This international treaty establishes a universally applicable and legally binding normative framework designed to effectively safeguard the fundamental rights of the child, including in the context of their interaction with the criminal justice system [1].

The Convention enshrines a series of core principles that directly influence how minors should be treated within criminal proceedings, including:

– *Principle of non-discrimination* – prohibits any form of differential treatment based on factors such as age, gender, language, economic status, ethnic origin, disability, or the social status of the child or their legal representatives.

– *Best interests of the child* – stipulates that the child's best interests must prevail in

all decisions undertaken by judicial bodies, administrative authorities, or social protection agencies, reflecting a child-centered approach grounded in real needs.

– *Right to dignity and humane treatment* – affirms the state's obligation to protect minors from any form of torture or cruel, inhuman, or degrading treatment, including in situations of detention.

– *Social reintegration and community responsibility* – emphasizes the importance of treating the child in a manner that fosters responsibility and rehabilitation, thereby facilitating reintegration into a stable family and community environment.

– *Absolute prohibition of degrading treatment* – reinforces international standards against any form of physical or psychological abuse directed at children.

– *Restriction of liberty-depriving measures* – requires that detention be used only as a measure of last resort, for the shortest appropriate period, and based strictly on a clearly established legal basis.

In addition to this convention, another key reference document is the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, commonly known as the "Beijing Rules". Adopted through General Assembly Resolution 40/33 on 29 November 1985, these rules provide a coherent framework for the functioning of national juvenile justice systems, promoting fair, humane, and proportionate treatment of minors in conflict with the law. The Beijing Rules emphasize: the prevention of juvenile delinquency through proactive social and educational policies; alternatives to detention, advocating for measures such as mediation, counseling, and social reintegration; and the active participation of the child in decision-making processes within a supportive, non-coercive environment.

The implementation of these international standards at the national level is essential to strengthen a legal system that responds effectively to the actual needs of minors. As a State Party to the Convention, the Republic of Moldova is obliged to reflect these principles in its domestic legislation and daily judicial practices. A fundamental principle enshrined in the Beijing Rules, developed under the auspices of the United Nations, stipulates that in all criminal cases – except for those of minor gravity – the competent authorities are required to carry out a thorough investigation before issuing a final decision. This examination must include aspects such as the minor's personal background, family environment, socioeconomic conditions, and the specific circumstances of the alleged offense [2].

The rationale behind this rule lies in the need to ground judicial decisions in a comprehensive analysis of the child's life circumstances, thereby avoiding arbitrary or disproportionate treatment. In the same vein, the UN Convention on the Rights of the Child, ratified by the Republic of Moldova in 1993, mandates in Article 40 that the state guarantees every child suspected or accused of having committed an offense the right to a fair trial, conducted promptly and with full respect for human dignity. This convention represents the cornerstone of any justice system that claims to be centered on the protection of the rights of minors in conflict with the law.

Complementing these provisions, two additional international documents further structure the normative architecture of juvenile justice: The United Nations Guidelines for the Prevention of Juvenile Delinquency, known as the Riyadh Guidelines, promote prevention policies based on social inclusion, education, and community-based intervention.

Alongside these, the United Nations Rules for the Protection of Juveniles Deprived

of Their Liberty, adopted under Resolution 45/113, aim to ensure humane and age-appropriate conditions in all forms of detention applicable to children. From a doctrinal perspective, Romanian professor Gabriel Mihai, a specialist in juvenile criminal law, argues that the effective implementation of these standards requires "not only a formal transposition into legislation but a genuine internalization of these principles within the professional culture of legal practitioners" [3, p.217].

In the context of the Republic of Moldova, applying these norms necessitates a critical analysis of the compatibility between international commitments and domestic legislation, as well as current judicial practices. According to Article 50, paragraph (2) of the Constitution of the Republic of Moldova, the state undertakes to provide "a special assistance regime" for children and young people, thereby reaffirming the importance of differentiated treatment adapted to the developmental needs of this vulnerable group [4]. The legal framework for juvenile criminal liability is established in Article 21 of the Criminal Code, which sets the general age of criminal responsibility at 16. Exceptionally, liability may begin at the age of 14 for particularly serious offenses. Below this age threshold, criminal liability is legally excluded, reflecting recognition of the child's insufficient cognitive and emotional development to consciously assume the consequences of their actions [5].

As Moldovan researcher Cristina Țăranu affirms, "the legal treatment applied to minors must meet not only the requirements of the law but also educational and psychosocial protection considerations aimed at reducing the risk of recidivism" [6, p.98]. Therefore, the intervention of the state in cases involving minors under the age of 14 should not be repressive but rather social, educational, and reintegration-oriented, aligned with the modern paradigm of restorative justice. Alongside this penal framework, other branches of national law provide relevant normative foundations for child protection.

For instance, the Family Code, in Article 2, paragraph (1), recognizes the fundamental role of the state in defending and promoting family relationships, outlining the notion that a stable family environment acts as a shield against deviant behavior. Similarly, Law No.547-XV of 25 December 2003 on Social Assistance establishes an institutional network aimed at mitigating the effects of social risks on children and vulnerable families. This involves interventions through specialized services and financial support, with the goal of reducing social marginalization, particularly in the case of minors from socio-economically disadvantaged backgrounds.

In addition to these normative dimensions, criminological analysis emphasizes the relevance of psychosocial components in evaluating juvenile delinquent behavior. The minimum age of criminal responsibility is not merely a matter of positive law but also reflects a social and cultural construct tied to the moral maturation of the child. Recent studies in juvenile neuropsychology demonstrate that the brain's executive functions – responsibility, empathy, and the ability to anticipate consequences – are not fully developed before the age of 18 to 21 [7]. According to researcher Mihaela Tomiță, "deviant behavior among adolescents is often an expression of emotional imbalance within the family, lack of supervision, or insufficient school integration" [8, p.164].

Consequently, the criminal justice system must shift from a purely retributive paradigm to an integrative one, centered on rehabilitation and early intervention. This approach is also endorsed by the United Nations, which explicitly recommends the integration of psychosocial services at all stages of the criminal process, from investigation to

post-sentence reintegration.With regard to the empirical dimension of the phenomenon, data provided by the General Police Inspectorate reveal a slightly upward trend in juvenile delinquency. In 2021, 695 offenses committed by minors were recorded, representing 2.6% of the national total – an increase of 14.7% compared to the previous year. In 2022, a similar number of 705 offenses was reported, maintaining the same proportion within the overall crime rate [9]. Recent statistics confirm the stable share of offenses committed by minors in the total crime rate of the Republic of Moldova at around 2.6% in 2022, although a slight percentage increase of 1.4% was observed compared to the previous year.

While quantitatively stable, this figure conceals a complex structural dynamic, indicating a rising trend in terms of severity and the types of offenses committed. A disaggregated analysis reveals the clear predominance of property-related crimes. In 2021, thefts accounted for 52.8% of all offenses committed by minors, followed by robberies (9.5%) and acts of hooliganism (6.5%). Similar data were recorded in 2020, when 56.3% of the 606 offenses attributed to minors were thefts, 6.6% were robberies, and 4% were acts of hooliganism [10]. Following a slight decline in 2020 (-8.7% compared to 2019), the subsequent years marked a return to an upward trend. This evolution highlights the limitations of the legal system in effectively and appropriately addressing the specific needs of this vulnerable group.

The need for an integrated intervention is increasingly pressing from strengthening prevention mechanisms to developing rehabilitation programs tailored to the individual needs of young people. In the legal doctrine, family structure and educational models are recognized as major determinants of minors' behavioral profiles. In the case of the Republic of Moldova, studies reveal a direct correlation between the absence of parental supervision and the increased risk of juvenile delinquency. According to Irina Rusu, a specialist in social psychopedagogy, "economic migration, family breakdown, and the absence of parental authority create emotional voids that may be compensated by antisocial behavior" [11, p.241].

In households where parents have migrated abroad for work, children are frequently left in the care of relatives or other members of the extended family without any formal delegation of parental responsibilities. This situation creates emotional instability and a lack of daily supervision – risk factors also confirmed by studies conducted in Chișinău, where 41% of surveyed children stated that their mothers were abroad, and 35.7% lacked the presence of their fathers. In 34.5% of cases, there was no formal arrangement to ensure parental continuity. Another alarming aspect is the absence of specialized services dedicated to children affected by parental migration. At present, these children only benefit from general support intended for minors in difficulty, without specific interventions tailored to the psychosocial vulnerabilities caused by family separation. This institutional gap limits the state's capacity to provide effective psychological and educational support.

One of the most pressing social phenomena affecting the psychological well-being of minors in the Republic of Moldova is the economic migration of parents. Urban studies, particularly in the municipality of Chișinău, reveal a chronic lack of notification to authorities when parents leave the country, which undermines the ability of social workers to intervene in a timely manner. The consequences of this institutional shortfall are alarming: only 4.8% of surveyed children maintain daily communication with their migrant parents, while 71.5% strongly feel the absence of parental affection, 61.7% suffer from a severe communication gap, and 22.7% report lacking coherent educational support.

This emotional and educational disconnect has direct consequences on children's emotional state and behavior. Minors left without supervision and emotional support frequently exhibit risky behaviors such as alcohol and substance use, attendance at unsupervised venues, depressive episodes, and impulsive aggression. These behaviors are symptomatic of the lack of a stable and predictable emotional environment, which is essential during the formative stage of adolescence [12, p.152]. In this context, the normative and procedural framework of criminal investigation must be adapted to reflect the complexity of social realities. The Republic of Moldova has ratified the UN Convention on the Rights of the Child, and national legislation – particularly the Criminal Code and the Criminal Procedure Code – contains special provisions concerning minors in conflict with the law.

Criminal investigations involving adolescents must be conducted with strict observance of the child's fundamental rights, including the right to defense, the right to a fair trial, the protection of privacy, and the application of a treatment adapted to their level of cognitive development. Interrogations, hearings, and other procedures must be conducted in an environment that does not induce anxiety, using clear and accessible language, with the mandatory participation of a lawyer and a specialized psychologist. The primary objective should not be repressive but restorative.

Modern juvenile justice policies promote alternative measures such as psychological counseling, mediation, educational supervision, or community-based interventions, which provide real opportunities for reintegration and reduce the risk of recidivism. To make these measures effective, it is imperative that all actors involved in criminal investigation – police officers, prosecutors, judges – receive continuous training focused on adolescent psychology, empathetic communication, and the adaptation of procedural tools to the particular needs of each minor [13]. A key challenge remains ensuring a balance between public safety imperatives and the demands of child protection. In recent years, the Republic of Moldova has initiated reforms in the juvenile justice system, targeting both the expansion of prevention programs and the strengthening of rehabilitation mechanisms in line with international standards.

An essential pillar in building a juvenile-sensitive criminal justice system is the jurisprudence of the European Court of Human Rights (ECtHR), which, through a series of landmark decisions, has outlined interpretative benchmarks for respecting minors' rights in criminal proceedings. These rulings emphasize the need for a rigorous adaptation of procedural safeguards to the cognitive and emotional development levels of children. Starting from the provisions of Article 6 of the European Convention on Human Rights, which enshrines the right to a fair trial, the ECtHR ruled in the cases of V.T. v. the United Kingdom and S.C. v. the United Kingdom that states have a duty to ensure effective legal representation for minors, as well as treatment appropriate to their age. The Court concluded that conducting an interrogation in the absence of a lawyer or parent/legal representative constitutes a serious breach of procedural fairness, particularly in the case of vulnerable individuals.

In the case of N.C. v. Italy, the Court reaffirmed that the pre-trial detention of minors must be used strictly as a measure of last resort, requiring courts to thoroughly analyze the adolescent's personal circumstances and to ensure the protection of their dignity and psychosocial integrity. The ECtHR emphasized that the standards for detention applicable to minors must differ significantly from those applied to adults, as the primary goal should be rehabilitation, not punishment. A landmark decision, Blokhin v. Russia,

provided an extensive assessment of situations where minors are placed in temporary detention centers. The Court held that in such cases, a presumption of the criminal nature of the procedure arises, even if not officially classified as such. This presumption can only be rebutted under exceptional circumstances, and in their absence, the application of custodial measures amounts to initiating criminal proceedings under the Convention.

These rulings confirm the ECtHR's consistent jurisprudential stance in favor of a juvenile justice model focused on the protection and rehabilitation of minors, in which procedures not only respect established rights but are also tailored to children's developmental realities. Reflecting these standards in domestic law – both legislatively and in the practice of prosecutorial and judicial bodies – is essential to ensuring a coherent, humane, and fair legal treatment. As emphasized by Prof. Dr. Ineta Ziemele, former ECtHR judge, "a justice system that fails to account for the particularities of minors becomes, through its rigidity, an additional factor of vulnerability" [14, p.314]. Building upon the theoretical foundations and conceptual framework previously analyzed, it is crucial to investigate the concrete manner in which the standards set by the European Court of Human Rights are implemented in practice, both within domestic jurisdictions and internationally.

The mere formal transposition of these norms into national legislation is insufficient in itself – real effectiveness depends on how they are concretely applied by the day-to-day actions of criminal justice actors. A relevant model in this regard is the National Crime Prevention Council (NCPC) in the United States of America, which operates as a support mechanism for communities, families, and institutions in the effort to combat juvenile delinquency. This body develops analytical tools, evidence-based intervention methodologies, and educational strategies aimed at preventing the emergence of criminal behavior among youth. It also coordinates interinstitutional programs and supports the ongoing training of professionals in the field by promoting a culture of prevention and rehabilitation rather than repression.

Regarding criminal proceedings involving minors, special attention must be paid to the interrogation phase, which represents one of the most vulnerable stages of the process. Interaction with a child suspect or accused cannot take place under the same conditions as with an adult; a psychologically supportive, non-intimidating environment is required – one in which the minor feels protected and understood. It is imperative that every procedural action be adapted to the child's age, level of cognitive and emotional development, and comprehension capacity. This adaptation calls for specialized professional training for all involved actors – police officers, prosecutors, judges, and social workers – so that they may apply communication techniques appropriate for minors.

Moreover, the presence of a lawyer, psychologist, or trusted adult during hearings is mandatory to ensure that the procedure is fair and non-discriminatory [15]. In this context, the "Beijing Rules" developed by the United Nations, offer a solid normative foundation, emphasizing respect for the dignity of the child, the need for procedures tailored to their level of maturity, and the avoidance of stigmatization or retraumatization. Authorities' interventions must not be based solely on the seriousness of the offense, but should incorporate a broad assessment of the minor's psychosocial profile, with the ultimate aim being rehabilitation rather than punitive sanction.

Furthermore, recent studies in forensic psychology show that merely involving a child in a criminal procedure can have long-term traumatic effects, negatively impacting self-image, trust in authorities, and the trajectory of personal development. For this

reason, it is essential to include ongoing psychological support for minors throughout the entire criminal justice process. Such an integrative approach promotes both a reduction in the risk of recidivism and a more effective and sustainable social reintegration [16]. In the context of modernizing and humanizing the juvenile criminal justice system, alternative options to traditional interrogation procedures and punitive mechanisms are becoming increasingly relevant. Interventions such as restorative justice mediation, psychological counseling, and community rehabilitation programs prove to be not only less traumatizing for young offenders but also more effective in terms of social reintegration and recidivism prevention.

A compelling example is offered by the Nordic juvenile justice models, particularly those of Sweden and Norway, where penal policies have been restructured around the principles of rehabilitation, restoration, and community participation. In these countries, the response to juvenile delinquency is guided by a philosophy that views the child not as a criminal, but as a developing individual in need of support for social reintegration. Families, schools, and community actors are actively involved in judicial interventions through integrated mechanisms that combine psychological support with education and individualized counseling.

Conversely, the analysis of cases in which minors' procedural rights have not been respected reveals systemic dysfunctions that cannot be ignored. These examples, often documented in international reports or in ECtHR jurisprudence, offer critical reference points for normative and institutional recalibration. The study of such deficiencies does not serve a punitive purpose, but rather a constructive one: to identify vulnerabilities and prevent the perpetuation of practices contrary to the best interests of the child. Accordingly, the evaluation of the juvenile justice system must be dynamic and adaptable, focused on balancing the demands of public order with the imperative of child protection.

Such balance can only be achieved through an in-depth understanding of each case, taking into account not only the nature of the offense but also the child's age, emotional maturity, family background, and psychosocial context. Moreover, shifting the focus from punitive response to identifying the root causes of deviant behavior represents one of the most challenging yet necessary directions. An effective juvenile justice system should not act solely post-factum but must include early educational and therapeutic interventions aimed at fostering individual responsibility and preventing the escalation of criminal conduct [17]. A core component of this paradigm is the continuous and interdisciplinary training of professionals involved (judges, prosecutors, lawyers, psychologists, police officers) who must combine legal expertise with empathetic communication skills and psychoeducational intervention abilities.

Furthermore, in the digital age, the proliferation of judicial technologies necessitates a reconsideration of how criminal procedures involving minors are managed, with a strong emphasis on data confidentiality, privacy protection, and the avoidance of re-victimization. Juvenile justice reform cannot be envisioned outside of an ethical and humanistic framework that prioritizes the child's recovery, dignity, and future over the mere punitive imperative. Only through such a comprehensive approach can a justice system be built that not only enforces the law but also humanizes it, becoming a genuine instrument of protection, transformation, and social inclusion.

A key document in shaping a child-friendly criminal justice system is the Council of Europe's Committee of Ministers Guidelines on Child-Friendly Justice. Although pri-

marily focused on judicial procedures and their alternatives, the guidelines emphasize the importance of cooperation among all stakeholders involved in responding to juvenile delinquency. They highlight the necessity of an integrative approach, in which professionals from diverse fields – legal experts, psychologists, police officers, social workers, medical personnel, and mediators – collaborate to gain a comprehensive understanding of the child and the context in which they are situated. The guidelines recommend the development of a common assessment framework for minors involved in judicial procedures, which should consider not only legal aspects but also social, cognitive, emotional, and health-related factors.

This multidisciplinary approach contributes to making well-informed decisions centered on the best interests of the child and helps reduce the risk of disproportionate or ineffective interventions. Looking to the future, it is imperative that the juvenile criminal justice system in the Republic of Moldova continue its process of reform and adaptation in line with international developments and domestic social realities. This entails not only legislative changes, but also the active promotion of rehabilitation programs, ensuring access to education, psychological services, and community support, particularly for minors from vulnerable backgrounds. At the same time, maintaining an open and constructive dialogue among all relevant actors – public institutions, civil society organizations, juvenile justice experts, mental health professionals, and local community representatives – is essential. Only through genuine collaboration can a criminal justice system be built that not only punishes but also educates, protects, and reintegrates.

In the same vein, it is important to emphasize that fair and humane treatment of minors in conflict with the law is not only a legal obligation but also a reflection of a society's moral and institutional maturity. A child-friendly criminal justice system must be proactive, empathetic, and equitable – focused on prevention, rehabilitation, and inclusion.

Conclusions and recommendations. At the conclusion of this research, we wish to emphasize the necessity of a periodic, rigorous, and impartial review of the juvenile criminal justice system, with a focus both on the progress made and on the areas that still require adjustments. Case studies, judicial practice analyses, and legal norm assessments indicate visible advancements in recognizing and addressing the specific needs of adolescents in conflict with the law, as well as a growing orientation toward recovery and reintegration measures. However, despite these positive developments, gaps persist, notably in ensuring effective access to qualified legal assistance, implementing age-appropriate interviewing methods, and providing sufficient psychosocial support programs.

Another critical aspect is the continuous training of the professionals involved in the justice process. Legal competencies must be complemented by a deep understanding of the social and psychological dimensions that influence juvenile behavior. Judicial practices cannot ignore these realities if they aim to deliver effective and fair interventions. Furthermore, adapting to the fast pace of social and technological change requires not only openness but also responsiveness. New technologies can enhance the criminal process but also bring risks related to privacy and the protection of personal data, particularly concerning children.

It is essential for the legal system to be flexible and responsive to the complexity of each case. Assessing a minor must involve more than evaluating the committed act – it requires analyzing their family background, emotional maturity, educational level, and support network. A fair justice system demands a delicate balance between safeguarding

public order and upholding human dignity, even in the most challenging situations. Sustainable reform in this field cannot occur without the cooperation of all relevant stakeholders – from legislators and judges to psychologists, educators, social workers, and NGOs. A collective vision is needed, one that treats the minor not merely as a subject of criminal liability but as a person in development, with the potential for change.

We therefore recommend the strengthening of a continuous monitoring system of the juvenile criminal justice response, aiming to build an institutional framework that does not punish, but offers genuine support and the opportunity for dignified development.

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THE CONTRIBUTION OF THE HEAD OF THE SPECIALIZED SUBDIVISION IN THE PERFORMANCE OF SPECIAL INVESTIGATION ACTIVITIES WITHIN THE PROCESS OF CRIME'S PREVENTING AND COMBATING

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Summary

The management of human activity emerged from the first forms of social organization, and to the extent of the continuous progress of humanity, the management of human resources is diversifying innovatively. Human thinking has accelerated the development of science and technology, and the basis of the organization and management of various activities, as a priority, is the efficient use of human, material and financial resources necessary to achieve the purpose of the activity carried out.

Among the useful activities for society is the special investigative activity that aims to prevent crimes and fight crime through special investigation procedures and measures applied only on the grounds and under the conditions provided by law. The management of this activity is ensured through the leaders of the authorities - subjects of the special investigative activity and is carried out directly by the leader(s) of the specialized subdivision (s).

Keywords: leader, authority, specialized subdivision, special investigative activity, special investigative measures.

Introduction. Law No.59 of 29.03.2012 on Special Investigative Activity [1, Art.8] (hereinafter the Law on SIA) dedicates a separate article to the heads of specialized subdivisions; and for a better understanding of the structural organization of the authority that carries out special investigative activity, as well as the importance of the head's position in this architecture, some explanations are needed.

The proposed law does not provide for the notion of the head of the specialized subdivision, and under these conditions, it would be difficult to understand the importance of this position, as well as which persons are eligible to be appointed for this activity.

The formulation of a notion, without attributing the exhaustive aspect, would be necessary to highlight the significance of the function of head of the specialized subdivision, which has direct involvement in the organization of special investigative activity in the process of crimes/crime's preventing and combating.

In this context, we propose the following notion "*head of the specialized subdivision with responsibilities in carrying out special investigative activity is the person designated in this position, based on the administrative act issued by the head of the authority – subject of the special investigative activity and/or issued by the head empowered with this right within the institution subordinated to this authority, being invested with rights, obligations and responsibilities resulting from this law and from the rules for the application of this law*". This notion, if applicable, can be outlined by including professional, ethical and personal qualities specific to the position of a head of the specialized subdivision.

At the same time, the head of the specialized subdivision is perceived as a boss and/or as a leader, and leadership [2], has a multitude of leadership styles, which can also complete a notion, offering the leader opportunities to adapt their work in such a way that subordinates to perform their function as well as possible and to be as productive as possible.

Only those persons who correspond to certain skills determined by the competencies in the field of special investigative activity, are appointed as heads of the specialized subdivision, and taking into account the complexity of the organizational structure of the authority – subject of SIA, management positions are ranked and delimited by competencies.

Among the basic skills that the head of the specialized subdivision must have, we can list the following:

– Knowledge regarding the organization and implementation of special investigative activities;

– Knowledge regarding the protection of information classified as state and service secret;

– Managerial knowledge regarding planning, coordination and control of special investigative activity;

– Knowledge of working with confidential employees;

– Knowledge regarding the special file management;

– Knowledge regarding the financial assurance of special investigative activities, etc.

In addition to the basic skills listed, the leader is to ensure the proper functioning of the activity of the specialized subdivision led, which will include the series of necessary processes such as selection, hiring, continuous training and equipping with all the necessary (special technical means, means of transport, other mobile and immobile logistical means, including for deployment) the subordinate personnel (investigation officers and the personnel who provide direct assistance in carrying out SIA tasks), etc. managerial skills.

Within the aforementioned context, it is noted that the functions of the heads of specialized subdivisions, arising from their functional competencies, are delimited by hierarchy, and this delimitation is interdependent on the procedure for establishing the specialized subdivision with competencies in the field of SIA and on the procedure for granting the status of investigation officer.

According to Art.6 paragraph (1) of the Law on SIA, the subjects who carry out special investigative activity are the investigation officers of the specialized prosecutor's offices (Anti-Corruption Prosecutor's Office and Prosecutor's Office for Combating Organized Crime and Special Cases) [3, Art.7 para.(1), Art.9 para.(1), (4) and (5), Art.99 para.(7) and (8)] and investigation officers of specialized subdivisions within or subordinated to the Ministry of Internal Affairs, the Ministry of Defense, the National Anticorruption Center, the State Protection and Guard Service, the Customs Service, the State Fiscal Service and the National Penitentiary Administration. Therefore, we determine that only the authorities mentioned in the provisions of paragraph (2) of the mentioned article may create within

or under their control specialized subdivisions with competences in the field of special investigative activity.

Simultaneously, the organizational structure and staffing of the specialized subdivision(s) within the authorities differ and are interdependent on several factors, including the complexity of the authority's organizational structure, the tasks and their scope of implementation determined within the competence of one or another authority, etc.

Specialized subdivisions with competences in carrying out special investigative activities (hereinafter specialized subdivisions) are created within or under the authority on the basis of the administrative act that is specific to the authority, signed by the head of the authority specified in Art.6 paragraph (1) of the Law on SIA.

For the establishment of specialized subdivisions with competences in carrying out special investigative activities within or under the subordination of the Ministry of Internal Affairs, the minister (in the case of another authority – its head) signs the administrative act (order), based on the motivated proposal(s) (necessary for the achievement of functional competences and attributions in the field of SIA) of the head(s) of the subordinated institutions.

Respectively, the Minister of Internal Affairs (in the case of another authority – its head), through the administrative act, grants the status of investigation officer only to the positions indicated in the approved staff list according to the organizational chart of the specialized subdivision(s) with competences in carrying out special investigative activity. The heads of institutions subordinated to the authority have the power to issue the administrative act of hiring and nominally designating personnel in the positions of the specialized subdivision, if the legal norms provide for these powers, or this right is delegated to the head(s) of the subordinated institution(s) by order of the Minister of Internal Affairs.

The organizational chart and staffing of the specialized subdivision are diversified and include a number of other functions which, although not meeting the full competencies of the investigation officer [4, Arts.9, 11, 12] through the support activities provided, contribute and/or are indispensable in achieving the objectives of the SIA. Thus, when granting the status of investigation officer, the support functions that are part of the specialized subdivision will also be taken into consideration, except for the functions within other subdivisions that do not have direct attributions to achieving the SIA objectives, but provide specialized support in a specific field of activity.

Each specialized subdivision is headed by a leader, who may be assisted by one or more deputies, having in their hierarchical subordination other heads that have the investigation officers directly subordinated. The hierarchy of subordination and division of management functions is diverse and does not have a similarity within the authorities – subjects of the SIA, because the organizational structure of the authorities differs.

Respectively, in the case of the creation of a specialized subdivision(s), the authority will issue one or more administrative acts, which will certainly include information regarding:

- Establishment within or under the authority of a viable operating structure;
- Approval of the organizational chart and staffing;
- Approval of the rules (regulations and/or instructions) for the organization and functioning of the activity;
- Delegation of powers to the head of the subordinated institution regarding ensuring control, coordination and direction of special investigative activity, as well as the right to appoint persons to some leadership positions of the specialized subdivision(s), etc., powers that are within the direct competence of the head of the authority.

The impartiality of the process of control, coordination and direction of activity

within an authority is a priority, and this process is achieved including by hierarchizing the subordination of management functions.

At the same time, it should be noted that although the Minister of Internal Affairs (in the case of another authority – its head), is the head of the authority within and under which specialized subdivisions with competences in carrying out SIA are established, however, the position of the minister, by virtue of the Law on SIA, is not invested with functional powers and competencies similar to those determined for the head of the subdivision specialized in carrying out SIA. The position of the head of the General Police Inspectorate (or the head of another institution within or subordinated to the authority – subject of the SIA) is in a similar situation, which has a deputy who is invested with the powers of organization, coordination and control of special investigative activity. In turn, in other words, the Minister of Internal Affairs and the Head of the General Police Inspectorate ensure the issuance of administrative acts regarding the creation, organization and ensuring the activity of specialized subdivisions, appoint the heads of specialized subdivisions to positions, ensure institutional, national and international cooperation, as well as ensure the control of special investigative activity. This does not mean that they are devoid of other skills characteristic of a leader of a specialized subdivision. In this sense, the Law on SIA makes a delimitation of the functional attributions of the head of the authority and/or the head of the institution subordinated to it from those of the head of the specialized subdivision.

The direct powers of the head of the authority result from the organization and functioning rules of the authority, adopted by the Parliament or the Government or by decree of the President of the Republic of Moldova. For example, the leadership of the Ministry of Internal Affairs is exercised by the minister, and the functional attributions of the minister are directly specified in the Regulation on the organization and functioning of the Ministry of Internal Affairs, approved by Government Decision No.693 of 30.08.2017 on the organization and functioning of the Ministry of Internal Affairs [4, point 9]. Another example, the State Protection and Guard Service is headed by a director, appointed and dismissed from office by the President of the Republic of Moldova, and the functional attributions of the director are specified both in Law No.134 of 13.06.2008 on the State Protection and Guard Service and in the Regulation on the organization and functioning of the State Protection and Guard Service, approved by decree of the President of the Republic of Moldova, at the proposal of the director of the Service [5, Art.8-10]. The leaders of other non-exemplified authorities, subjects of the SIA, are also governed by the rules specific to the authorities to which they belong. Simultaneously, the basic attributions of the heads of the authorities, subjects of the SIA, determined by direct norms, are additionally complemented with a series of specific attributions granted by other laws, and the Law on the SIA, through the provisions mentioned above, serves as an example. Therefore, the excess of powers granted to the head of the authority may also have some unpredictable consequences, which can be anticipated including by delegating some powers to other leaders initiated in this field of activity.

So, in the case of an authority that has a complex organizational structure (for example, the Ministry of Internal Affairs), as a rule, the head of the authority delegates some of his or her duties to the head of the institution subordinated to the authority, who, independently and/or in coordination, ensures the organization of the activity of the specialized subdivision(s) subordinated to him or her.

Returning to the provision of Art.8 of the Law on SIA, dedicated to the head of the specialized subdivision "heads of specialized subdivisions of the authorities that carry out

special investigative activity", we are faced with the words "*of the authorities*", also present in paragraph (1) of the same article, which may further disrupt our perception of who the head of the specialized subdivision is in relation to the position of head of the authority. On the contrary, as mentioned above, the head of the authority and/or the head of the institution subordinated to the authority only performs administrative functions hierarchically superior to the function of the head of the subdivision specialized in carrying out special investigative activity. Starting from this fact, as well as understanding that the system of organization and functioning of the authorities - subjects of the SIA is different, it would be rational to submit a legislative initiative to exclude the words "*of the authorities*" from the title of Art.8 and from the provisions of paragraph (1) of the same article. Likewise, it would be rational to include in paragraph (1) of the aforementioned article the notion of the head of the specialized subdivision that carries out the special investigative activity, and additionally, a proposal for such a notion that was presented above. The initiatives presented would contribute to a clearer understanding of the notion of the head of the subdivision specialized in carrying out special investigative activities and would exclude any possible interpretations or textual errors.

In the meanwhile, the head of the subdivision specialized in carrying out special investigative activities has a number of duties, rights and responsibilities determined by the Law on SIA, but also by other norms developed for the application of this law.

The duties, rights and responsibilities of the head of the specialized subdivision result directly from the provisions of the Law on SIA (Art. 5 para.(2), Art.5[1], Art.6 para.(3), Art.7, Art.8, Art.9 para.(6), Art.10 para.(1) letter a) and para.(2), Art.11-13, Art.15-17, Art.20, Art.21 para.(3), Art.22 para.(1) and para.(4), Art.22[1] para.(2), para.(4) and para.(6), Art.24 para.(1) and para.(2), Art.26 para.(1) and para.(3), Art.27 para.(1), para.(4), para.(5), para.(7) and para.(8), Art.28-36[4], Art.37 para.(1), Art.38 para.(2) and para.(3); Art.40, Art.41 para.(2)), as well as ensures the execution processes by the investigating officer of the procedures ordered in accordance with the Criminal Procedure Code [7, Art.57[2] para.(3), section 5 "special investigative measures" Art.133-138[12]].

The delimitation of the functional attributions of the head of the authority from those assigned to the competence of the head of the specialized subdivision also results from other common and departmental norms approved by the subject authorities of the SIA, however, the provisions of these norms cannot be disclosed for the purpose of ensuring the protection of information attributed to state secret.

Therefore, the head of the specialized subdivision within or subordinated to the authority, subject of the special investigation activity organizes and ensures the proper functioning of the led subdivision and is the person responsible for the implementation and control of compliance by the subordinated investigation officers with all processes regulated by the operating rules of the specialized subdivision in SIA carrying out.

Respectively, the head of the authority – subject of the special investigative activity –exercises administrative functions directed at the creation and/or dissolution of the specialized subdivision, appoints or revokes the head of the specialized subdivision, approves regulations and other norms for the functioning of the specialized subdivision, delegates powers, as well as exercises other attributions provided for by the special norms in the field of SIA that do not overlap and do not contradict the attributions determined for the head of the specialized subdivision.

Ferenda law proposals:

- Exclusion of the words "*of the authorities*" from the title of Article 8 of Law No.59

of 29.03.2012 on special investigative activity, and presentation of the name of the article in the new wording "*Head of the specialized subdivision carrying out special investigative activity*";

- Inclusion in Art.8 paragraph (1) of Law No.59 of 29.03.2012 on special investigative activity of the notion "*the head of the specialized subdivision with responsibilities in carrying out special investigative activity is the person designated in this position, based on the administrative act issued by the head of the authority – subject of the special investigative activity – and/or issued by the head empowered with this right within the institution subordinated to this authority, being invested with rights, obligations and responsibilities resulting from this law and from the rules for the application of this law*";

- Textual merging of the current provisions of paragraph (1) with the provisions of paragraph (2) of Art.8 of Law No.59 of 29.03.2012 on special investigative activity, and presentation of the content of paragraph (2) in the new wording "*The head of the specialized subdivision that carries out the special investigative activity, hereinafter referred to as the specialized subdivision, authorizes the special investigative measures provided for in Art.27 paragraph (1) point 3), gives written instructions and exercises control over their execution, distributes the documents ordering the performance of the special investigative measures, directs and coordinates the activity of the subordinated investigative officers*".

The proposals for *lege ferenda* submitted above aim to exclude possible interpretations or textual errors, and are intended to bring clarity to the procedure for appointing to office and granting the status of head of the specialized subdivision.

The functional attributions determined within the competence of the head of the subdivision specialized in carrying out special investigative activity are to be delimited by the administrative attributions with which the head of the authority and other heads of subdivisions and institutions within or subordinated to the authority are invested – subjects of special investigative activity, and the common normative act and/or departmental act issued by the authorities implementing Law No.59 of 29.03.2012 on special investigative activity are to remove the confusions found through this study.

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THEORETICAL AND PRACTICAL APPROACH TO THE EXECUTION OF SENTENCE IN THE FORM OF LIQUIDATION OF A LEGAL ENTITY IN THE LEGISLATION OF ROMANIA AND THE REPUBLIC OF MOLDOVA IN A COMPARATIVE PERSPECTIVE

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Summary

The comparative analysis of the legislation of Romania and the Republic of Moldova is a study worthy of attention given that both states have common social values and sources of law.

The study of the typology of crimes committed in recent decades is aimed at protecting the norms in the field of the environment, public health, occupational safety, financial, commercial, and fiscal environment. This has determined the usefulness and necessity of regulating in modern criminal law the harshest punishment against legal entities. The liquidation of legal entities as a criminal sanction is a complex process, justified by socio-economic needs. The study of this institution has been the subject of disputes that have marked criminal doctrine throughout the last century. The dissolution of legal entities implies the occurrence of consequences provided for by civil legislation, so that the interaction of criminal law norms with civil law norms is achieved with difficulty, taking into account the purpose of criminal law in general.

Keywords: legal person, criminal liability of the legal person, liquidation, dissolution, private law legal persons, public law legal persons.

Introduction. The economic development of the late 19th and early 20th centuries was the premise for the emergence of more and more legal entities, so that the risk of committing crimes by them increased considerably. As a consequence, the criminal liability of the legal person began to be regulated in legislation or jurisprudence. The common law system being the first to reintroduce in the contemporary era the criminal liability of the legal person [1, p.29]. This, becoming over time, from a historical fiction, a reality regulated in modern criminal codes. Whether it is necessary or not, whether it is useful or not, is a topic that still involves many discussions in the specialized literature. [2, p.653].

The study of the historical evolution of this institution is able to support the idea that the criminal liability of legal entity is not a reckless innovation of the last decades, on the contrary, it is in perfect accordance with the fundamental principles of criminal law, with the nature of the legal person and is justified by the needs of socio-economic order [3, p.81-84].

Promoters of the theory of reality believe that it is possible to engage the criminal

liability of the legal entity, or it is a legal reality, having its own will, distinct from that of its members, with its own patrimony, having rights and obligations distinct from those of its members. Once the civil liability capacity of the legal entity was recognized, it was only one step until the criminal liability was recognized [2, p.657].

The analysis of the criminal typology of the last decades shows a tendency to commit crimes directed against the social values of general interest of the community: the environment, public health, work safety, the financial, commercial, fiscal field. This phenomenon highlighted the need for a doctrinal approach to the usefulness of holding the legal person criminally liable.

The realization of criminal law norms takes place through the voluntary compliance by the majority of individuals of criminal precepts. Thus, the importance of the enforcement of criminal law sanctions is determined by the achievement of the legal order both by compliance and by the coercion exercised against those who ignored the provisions of the criminal rules. If criminal liability is a consequence of the commission of a crime, then the sanction and its enforcement is the consequence of establishing criminal liability [4, p.81].

In modern criminal law, the Council of the European Union on June 19th, 1997 approved the second protocol drawn up under Article K.3 of the Treaty on the European Union, to the Convention on the protection of the financial interests of the European Communities by which it signaled to the member states that the Communities European countries may be affected or threatened by acts committed in the name of legal entities and by acts involving money laundering and the conviction that these states had reached of the need to adapt, as the case may be, national legislation, so that they provide for the criminal liability of legal entities for acts of fraud, corruption or money laundering, committed in their name, which harm or risk harming the financial interests of the European Communities. Thus, Art.3 of the mentioned normative act required the Member States to take the necessary measures so that legal entities are held criminally liable for the crimes of active corruption, fraud and money laundering. According to the cited regulation, the employment of criminal liability could occur under the conditions in which the crime is committed: a) in the name of the legal entity; b) by any person acting either individually or as a member of a body of the legal entity that has management attributions within it, on one of the following alternative bases: power of representation of the legal entity; the authority to make decisions on behalf of the legal entity; the authority to exercise control within the legal entity [5].

Methods and materials applied. Comparative analysis of the legislation of the Republic of Moldova and Romania, of the relevant doctrine requires studying each element of the execution of the penalty in the form of liquidation of the legal entity.

Discussions and results obtained. *Subjects involved in ensuring the execution of the sentence with the liquidation of the legal entity.* The State is the only active subject of criminal liability relations, having the monopoly of the right to punish. This is carried out through the bodies empowered with such powers. Criminal prosecution and trial of cases regarding crimes committed by legal entities are carried out according to the usual procedure, with some exceptions [6].

The administration of justice is an exclusive responsibility of the courts. The State has assumed this exclusive right based on the fact that it would be illusory for other participants in this relationship. The legal norms that enshrine this prerogative ensure a

mechanism of imperativeness. Thus, justice is administered in the name of the law only by the courts. The establishment of illegitimate courts is prohibited. No one may be found guilty of committing a crime and be subject to a criminal penalty, except on the basis of a final judgment of a court, adopted in accordance with the law. Sentences and other court decisions in a criminal case may be reviewed only by courts in accordance with the organization of their hierarchy. Sentences and other court decisions of illegitimate courts have no legal force and cannot be executed [6].

The liquidation of a legal entity consists in its dissolution, with the occurrence of the consequences provided for by civil law. This being the most severe punishment, because it leads to the loss of the legal personality of the person, determining the impossibility of its existence as a subject of rights and obligations, and the cessation of its capacity for use and exercise. The liquidation of a legal entity is established if the court finds that the gravity of the crime committed makes it impossible to maintain such a legal entity and extend its activity [9].

Pre- and post-liquidation stages, the sequence of actions taken by subjects in the process of liquidation of a legal entity. The liquidation of a legal entity is a complex and continuous process and does not equate to the immediate cessation of the activity of the legal entity. It continues to exist after dissolution during the period of liquidation of the assets. However, from the moment of dissolution, the administrator cannot undertake new operations.

After the finality of the conviction decision ordering the liquidation of the legal entity, the court transmits its decision to the competent court to take measures and continue the liquidation process, in accordance with civil law. The competent person shall notify, within 5 days, the court that issued the conviction decision ordering the liquidation of the enterprise [7]. A similar regulation can be found in Romanian legislation in the norm of Art.498 of the Criminal Procedure Code: "a copy of the operative part of the conviction shall be communicated, on the date of its finality, by the judge delegated with the execution to the respective legal entity, as well as to the body that authorized the establishment of the legal entity, respectively to the body that registered the legal entity, requesting at the same time information on the manner of carrying out the measure" [18].

The State Register of Legal Entities is the information resource that is part of the State Register of Legal Units and contains data on legal entities registered in the Republic of Moldova. [8]. The conditions for registration are also regulated by Romanian legislation, through Art.226 paragraph (2) of the Romania Civil Code: "with the registration of a legal entity, its name and other identification attributes shall be entered in the public register [21].

As for *legal entities under public law*, it has long been considered in criminal doctrine that they cannot be held criminally liable, both because they ensure protection of general interests and because it would be unacceptable for the state, which holds the right to punish, to declare itself a criminal and to submit to its own repression. Over time, criticisms of the thesis of the non-criminal liability of legal persons under public law have intensified, arguing that there are no convincing arguments to justify why the state's liability, admitted in other matters (civil), should not be admitted in criminal matters [2, p.660-661]. In legislative terms, the state has regulated certain entities that the law recognizes as legal personality and which are exempt from criminal liability in consideration of the sovereign powers they exercise. According to Art.21 para.(4) of the Criminal Code

of the Republic of Moldova, legal persons, with the exception of public authorities, are criminally liable for offenses for the commission of which a sanction is provided for legal persons in the special part of the Criminal Code [9]. A similar norm is enshrined in the criminal law of Romania by Art.135 of the Criminal Code: "a legal person, with the exception of the state and public authorities, is criminally liable for crimes committed in the pursuit of the object of activity or in the interest or on behalf of the legal person" [27].

The notion of legal person is found in Art.171 of the Civil Code of the Republic of Moldova, as follows: "a legal person is a legal subject established under the law, having an independent organization and its own and distinct patrimony, assigned to the achievement of a certain purpose in accordance with the law, public order and good morals. Legal persons are of public law or private law which in civil relations, are situated on equal positions" [10]. Likewise, the quality of legal person regulated by Art.188 of the Civil Code of Romania is conferred on those entities that are provided for by law, as well as any other legally established organizations that, although not declared legal persons by law, meet all the legal conditions imposed, namely to have an independent organization and its own patrimony, assigned to the achievement of a certain lawful and moral purpose, in accordance with the general interest [21].

The liquidation of a legal entity is a complex legal and technical procedure that involves both criminal and criminal procedural law institutions as well as civil and civil procedural law.

Private law legal entities may be freely established only in one of the forms provided for by law. [10; 21]. For the reasons stated above regarding the non-admissibility of holding public law legal entities criminally liable, in this study we will refer to the liquidation procedure of private law legal entities in general and the procedure specific to certain categories of legal entities in particular in a comparative manner.

Legal personality is determined by the moment of issuing the administrative act in the form of a decision and its registration in the State Register. The procedure for deregistration of a legal entity is similar, in that it is preceded by the moment of adopting the decision to deregister from the State Register. The registrar will adopt the deregistration decision within the period regulated by law after receiving the deregistration application.

Companies with legal personality are established in one of the following forms: a) general partnership; b) simple limited partnership; c) joint-stock company; d) limited partnership by shares and e) limited liability company [22].

The liquidation of a *joint-stock company* is carried out by a liquidation commission or liquidator to whom all powers of management of the company's current activity are transferred. Based on the final and irrevocable decision of the court and after the company is removed from the State Register of Legal Entities, the National Financial Market Commission removes the securities of the respective company from the Register of Securities Issuers, and the Central Depository/Registrar closes the accounts in its registers [11]. Art.237 of Law No.31 of 16 November 1990 (republished) on companies in paragraph (6) is regulated: "after the court decision of dissolution becomes final, the National Trade Register Office, through the registrar, at the request of the company, of any interested person or ex officio, appoints, by resolution, a liquidator registered in the Register of Insolvency Practitioners" [20].

In the event of liquidation of a *limited liability company*, the liquidator or administrator is obliged to transmit to the state archive, in accordance with the legislation, the

company's documents prior to its deletion from the State Register of Legal Entities [13].

The provisions of the state registration of legal entities and individual entrepreneurs also apply to *non-commercial organizations* [14].

Therefore, the competent body for their deletion is also the State Register of Legal Entities. The procedure for the liquidation of a non-commercial organization by court decision may also take place at the request of the Ministry of Justice, if its activity contradicts the interests of national security, public safety, the defense of order or the prevention of crimes, the protection of health, morals and the rights and freedoms of others and this measure is necessary in a democratic society, as well as if the provisions of Art.11 para.(6) of the law on non-commercial organizations No.86 of 11.06.2020, have not been complied with. In Romanian legislation, the grounds for the dissolution of associations and federations by court decision or tribunal, as the case may be, are regulated by Art.54 of the Ordinance of the Government of Romania on associations and foundations [23].

Trade unions are associations of voluntary nature, consisting of individuals united by common interests, including those related to their activity, and established for the purpose of defending the collective and individual professional, economic, labor and social rights and interests of their members. The primary trade union organization, the territorial branch trade union center, the territorial interbranch trade union center, the national branch trade union center and the national interbranch trade union center obtain the status of a legal entity from the moment of their registration with the Public Services Agency in accordance with Law No.1129/2000 on trade unions and Law No.220/2007 on the state registration of legal entities and individual entrepreneurs. Their liquidation is assimilated to the liquidation procedure of these entities [15]. The regulation of the Reorganization and Dissolution of Trade Union Organizations in Romanian Legislation is provided for in Chapter III of the Law on Social Dialogue No.62 of 10 May 2011 [24].

With reference to the legal status of *political parties*, they are voluntary associations with legal personality status [16]. The Ministry of Justice shall submit to the court an action requesting the dissolution of the political party if there is a basis for ex officio deletion from the State Register of Legal Entities. In the event of the dissolution of the political party by court decision, the Ministry of Justice shall request the Public Services Agency to note in the State Register of Legal Entities the initiation of the liquidation procedure of the respective political party. For the liquidation of a political party, the Ministry of Justice, in order to execute the final decision of the court, shall create a party liquidation commission. The liquidators are obliged to continue the ongoing operations, to execute the creditors' claims, and if the available funds are insufficient to pay all debts, they are entitled to sell the assets of the political party. For damages caused through their fault, the liquidators are liable both to the political party in liquidation and to third parties. The existence of a political party ceases only after the completion of the liquidation procedure and the party's removal from the State Register of Legal Entities [16]. A political party in Romania ceases its activity by dissolution, by decision pronounced by the Bucharest Court. Dissolution takes place by court order when the purpose or activity of the political party has become illicit or contrary to public order; when the achievement of the purpose of the political party is pursued by illicit means or contrary to public order [25].

In Republic of Moldova, the *religious cult* represents a religious structure, with the status of a legal entity, which carries out its activity on its territory according to doctrinal, canonical, moral, disciplinary norms and its own historical and cult traditions, which do

not contradict the legislation in force, being constituted by persons subject to the jurisdiction of the Republic of Moldova, who jointly manifest their religious beliefs, respecting the established traditions, rites and ceremonial [17].

The grounds for the termination of the activity of religious cults and their component parts may be the decision of the court, if the religious cults or their component parts carry out serious actions or repeatedly carry out actions provided for in Art.24 paragraph (2) of the aforementioned law, or do not comply with the previous court decision to suspend the activity of religious cults or their component parts. The Ministry of Justice has the right to act in court for the termination of the activity of religious cults or their component parts, with the presentation of conclusive evidence regarding their guilt. Therefore, the civil-legal liquidation mechanism takes place through the Ministry of Justice [17]. The dissolution of a religious association in Romania is decided by the competent court when, through its activity, the religious association seriously harms public security, order, health or public morals, fundamental human rights and freedoms, or when the religious association pursues a purpose other than that for which it was established [26].

The study of the historical evolution of the criminal liability of legal entities is in perfect accordance with the fundamental principles of criminal law, with the nature of the legal entity and is justified by socio-economic needs. The implementation of the mechanism of execution of the penalty in the form of liquidation of the legal entity in the legislation of Romania and the Republic of Moldova has undergone significant evolution in recent decades, demonstrating its full applicability by the subjects involved in ensuring its execution.

Conclusions. The similarity of the legislations of Romania and Republic of Moldova is largely due to common social values and sources of law. The institution of executing the penalty of liquidation of a legal entity represents in both cases a complex and long-term technical-legal procedure. The interaction of the norms of criminal law and criminal procedure with those of civil law and civil procedure is inevitable. For these reasons, the mechanism is implemented with difficulties. Or the penalty is directed against the existence of the legal entity in particular, and the procedure itself is directed against its assets or activity with the capitalization through liquidation of its assets in general.

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THE CORRELATION BETWEEN THE VERIFICATION OF TESTIMONY AT THE CRIME SCENE AND OTHER CRIMINAL PROSECUTION ACTIONS

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Summary

Until the legislative regulation, the verification of testimony at the crime scene was used quite widely in practical activity, but it was carried out as experiment, additional crime scene investigation or interrogation. Subsequently, in order to satisfy the needs of the judicial practice, it received legislative regulation and acquired the status of an independent criminal prosecution action, which led to carrying out special studies in the field of verification of testimony at the crime scene. However, despite the widespread use of the verification of testimony at the crime scene in the investigation of crimes, several tactical and procedural issues continue to remain unresolved. The insufficient understanding by the subjects of criminal prosecution of the issues pertaining to the verification of testimony at the crime scene and the lack of necessary experience in carrying out this criminal prosecution action substantially reduce the quality of its conduct. However, it is obvious that in such a situation, it is objectively impossible to assess the efficiency of verification of testimony at the crime scene and its ratio or correlation with other criminal prosecution actions, hence, the choice of the topic for this article.

Keywords: testimony verification, crime scene, criminal prosecution action, report, evidence, criminal prosecution body, interrogation, on-site investigation, criminal trial, tactics, correlation.

Introduction. New independent criminal prosecution actions are formed through an original combination of separate methods of cognition, united by a certain goal, which is different from the goal of the other criminal prosecution actions. The initial stage of the emergence and consolidation of the verification of testimony at the scene of the crime showed that the internal structure, which determines the essence, the content and the uniqueness of the operations fostering the essence of this criminal prosecution action, did not arise spontaneously, but a generous amount of time was required to establish the real requirements for obtaining evidentiary information in criminal cases [17, p.40].

Even after the legislative regulation of this criminal prosecution action was carried out in the Criminal Procedure Code [1], opinions were expressed in scientific circles regarding its non-acceptance as such, due to the great similarity with other criminal prosecution actions [14, p.277-280].

It is believed that the verification of testimony at the crime scene combines a number of features characteristic of interrogation, on-site investigation, lineup and experiment. This perception is, in fact, an element of the systemic approach in defining the origin of the verification of testimony at the crime scene in relation to other similar criminal prosecution actions. Indeed, an issue with a significant impact and scientific and practical meaning is the identification of the interdependence between the verification of testi-

mony at the crime scene and other related criminal prosecution actions, as well as the discovery of similarities and differences between them. The use of a systemic approach allows understanding the object of research from different perspectives, emphasizing its complexity and structure, highlighting its specificity and uniqueness, as well as determining the relationships with other interconnected subjects.

The materialization and identification of the relationship between the verification of testimony at the crime scene and other related criminal prosecution actions presuppose a complex study of the object of research as a whole, from the perspective of systemic analysis. This means that the verification of testimony at the crime scene should not be viewed in isolation, but together with the interrogation, on-site investigation, lineup and the experiment, considering certain common features as well.

According to many researchers, the systemic approach is an important direction in contemporary science, since, fulfilling the theoretical and methodological function of knowledge, it contributes to the study of the systemic properties of many phenomena and processes [16, p.19; 31, p.241]. Starting from the current understanding of the systemic approach as interconnected elements, the manifestations of which represent qualitatively new properties that cannot be reduced to individual elements of the system, the research of the verification of testimony at the crime scene from the perspective of this approach should be oriented towards the following aspects: 1) The analysis of the verification of testimony at the crime scene and other related criminal prosecution actions should be carried out on the basis of precise criteria, namely: the objectives to be achieved in the criminal procedure, the features of the knowledge process, the nature of the research conducted, their scope, the peculiarities of recording the evolution and the results; 2) The identification of the common characteristics of the verification of testimony at the crime scene and other related criminal prosecution actions in the context of their purpose.

The proposed approach to the analysis of the verification of testimony at the crime scene will not only allow revealing the essential characteristics and features of this criminal prosecution action, but also consolidating general knowledge pertaining to criminal prosecution actions as a specific system.

Methods and materials applied. The research methodology is based on the dialectical method of cognition of reality and on particular methods of scientific knowledge: analysis, synthesis, induction and deduction. To carry out the research and achieve the set objectives and tasks, the comparative method was also used (which consists in the direct comparison of the verification of testimony at the crime scene and other related criminal prosecution actions based on specific features), as well as the generalization of criminal prosecution practice, and the current criminal procedural legislation was used as a normative basis. The theoretical foundation of the study is constituted by the works of researchers in the field of criminal procedure, forensics and judicial psychology.

Discussions and results obtained. Verifying and clarifying testimony at the crime scene is an effective tool for identifying and excluding the reasons for contradictions in the testimony of participants in the crime. The data obtained after verifying testimony at the scene are sometimes of major importance not only for conducting the investigation of the case, but also for exposing false testimony. Verifying testimony at the crime scene should be understood as an action of criminal prosecution and independent forensic tactics when the representative of the criminal prosecution body together with the previously interrogated person make a trip to the crime scene in order to verify or clarify his/

her testimony. This criminal prosecution activity is not only specific by the way it is carried out, but to a great extent by the definite goals and tasks assigned to it, as well as the place where it is held [4, p.639-640]. At the same time, we can observe both a correlation of the verification of testimony at the scene of the crime with other criminal prosecution actions (presenting common features), as well as certain substantial differences (specific features) in relation to other evidentiary procedures.

The verification of testimony at the crime scene and the experiment in the criminal prosecution procedure. It is absolutely obvious that there are certain similarities between the verification of testimony at the scene of the crime and the experiment. However, this similarity is only evident in the case of the general rules for conducting criminal prosecution actions: both the verification of testimony at the scene of the crime and the experiments reproduce actions that occurred at the time of the crime, but only after the commencement of the criminal prosecution.

The main purpose of the experiment as an action, is to verify and clarify, in specially created artificial conditions, data relevant to the criminal case, by determining whether the verified person had the possibility to see, hear or perform certain actions or not. The verification of testimony at the crime scene does not pursue such a goal. Its goal is to determine the degree of knowledge of the person in relation to an event in a specific material context.

The purposes of the verification of testimony at the crime scene are: verification of the collected evidence; clarification of the collected evidence; obtaining new evidence; forming the representative of the criminal prosecution body's own conviction in the objectivity of the information obtained during the interrogation and its relevance to the criminal event as a whole or to certain circumstances of it [5, p.657].

The verification of testimony at the crime scene, unlike the experiment, does not require modeling the situation in which the investigated event took place. Its essence lies in comparing the testimony of the suspect, accused, injured party or witness regarding the place and context of the event, the actions of the participants in it, with the testimony made by the same persons during the interrogation.

To conduct an experiment, it is necessary to create special conditions, as close as possible to the period in which the crime was committed. Besides, as several authors emphasize, the degree of compliance of these conditions generally depends on the content of the experiment, the context in which it will be conducted and the possibility of reconstructing that situation [12, p.605; 13, p.362; 25, p.385]. In the process of verifying testimony at the crime scene, no experimental actions are carried out. This is the basic difference between verifying testimony at the crime scene and an experiment [5, p.651].

Verifying testimony at the crime scene does not require such actions, since the context is perceived as it was at the time of the crime. While an experiment can be carried out in a place that best corresponds to the conditions being verified, verifying testimony at the crime scene must take place in a specific place, determined by the participant in the criminal prosecution. In addition, verifying testimony at the crime scene can take place in any situation, regardless of weather conditions or time of day.

A distinctive feature of the verification of testimony at the crime scene is also the fact that the conduct of this criminal prosecution action is only possible with the direct participation of the person who has already been interrogated, while the experiment can be carried out without the participation of the person in question. In the experiment,

the representative of the criminal prosecution body plays the role of the organizer of this criminal prosecution action: he/she sets up the place of its conduct, the order and sequence of operations, the conditions of the experiment, defines the content of the research conducted – in a word, the representative of the criminal prosecution body leads the entire process of the experiment.

During the verification of testimony at the crime scene, any external intervention in the conduct of this criminal prosecution action is strictly prohibited, as it may lead to the loss of the opportunity of obtaining new information relevant to the criminal case. On these terms, the representative of the criminal prosecution body asks the person whose testimony is being verified to indicate the route taken to the crime scene, to identify the place and to relate the associated circumstances. In this context, the lack of intervention represents a psychological means of deepening the understanding of the mechanism of the committed crime. In this regard, A.V. Dulov emphasizes that the presence at the place where the crime took place influences the psyche of the person making the testimony, stimulates memory processes and causes certain emotional experiences related to that place [19, p.134]. It's also worth mentioning that, during the verification of testimony at the crime scene, the verified person comes into direct contact with the investigated event, right in the place where it took place. Therefore, it is easier to reach a conclusion about the involvement of the person in the verified event in the process of observing it.

In the case of conducting an experiment, the situation is completely different. First, the place of the experiment does not always coincide with the place of the crime. Second, artificially created conditions cannot fully reflect the depth of the investigated event. Third, when modeling the conditions, not the actual material evidence is often used, but only its models, which, ultimately, does not allow completely recreating the situation in which the person was at the time of the crime. Therefore, the information obtained from verifying the testimony at the crime scene allows for the most accurate assessment of the situation and the adoption of a correct decision based on it.

An important difference between the verification of testimony at the crime scene and the experiment also lies in the fact that, when recording the course and the results of the verified events in the report of the verification of testimony at the crime scene, the main attention is paid to the testimony and explanations of the person participating in the criminal prosecution action, as well as the peculiarities of his/her behavior, the manner in which he/she presents him/herself, the demonstration of his/her actions, etc. In the report of the experiment, the nature of recording the course and the results of the criminal prosecution action is different. First of all, the report of the experiment describes the context in which the verified action is carried out, the sequence of the respective actions, as well as the possibility of their repetition under different conditions and, of course, the results obtained [22, p.142].

Given the arguments presented, it can be concluded that in the experiment or the testing is carried out in specially created conditions, as close as possible to the investigated event, in order to find out the factual data relevant to the case. However, even in the context of the verification of testimony at the crime scene, circumstances that are of significant importance for the criminal case are discovered. In this case, the final consolidation of evidence is carried out, but not through experimental actions, but through the use of the direct context in which the person demonstrates the event or action that occurred at the time of the commission of the crime.

From the above, it can be concluded that, despite the similarities, the procedural nature of these criminal prosecution actions does not allow for their merger, due to essential differences. Verification of testimony at the crime scene allows for less uncertainty regarding the objectivity of the results obtained. This is due to the fact that conducting an experiment is associated with a greater number of organizational difficulties, and the results obtained within it are not always indisputable, since they depend on several conditions. While in the experiment we are dealing with a modeled context scheme, in the case of verifying testimony at the crime scene, the person examines the real context in which the crime was committed [17, p.46-47].

The verification of testimony at the crime scene and the on-site investigation. Objectively reflecting the activity of the persons involved in committing the illegal act, the traces of the crime represent elements of great evidentiary value, as they are very precious in finding out the truth in the criminal trial [3, p.295; 6, p.15]. For this very reason, the on-site investigation occupies an important place within the evidentiary activities that contribute to achieving the goal of the criminal trial, namely to find out the truth [8, p.175; 9, p.43].

It should be noted that the verification of testimony at the crime scene and the on-site investigation have certain common features, but their procedural character and the tactics of their conduct differ significantly. The similarity is manifested, first of all, by the specificity of the place of the verified event and the use of the same method of knowledge – the observation, through which the representative of the criminal prosecution body mentally builds a possible image of the event in question. Other than that, the differences between these two criminal prosecution actions are obvious, which makes impossible considering the verification of testimony at the crime scene as an action derived from the on-site investigation. The on-site investigation is a primary criminal prosecution action, directly aimed at recording the context of the crime scene and the existing traces in the form in which they were preserved at the time of the arrival of the person conducting the criminal prosecution.

The verification of testimony at the crime scene is not directly related to the results of the events that are brought to the fore during the on-site investigation. On the contrary, it is a continuation of the chain of criminal prosecution actions that directly derive from the initial stage of the investigation, and its conduct is possible only on the basis of the results of the on-site investigation.

The difference between these two investigative actions is also manifested in the following aspects: 1) The essence of the on-site investigation lies in the fact that the information about the circumstances of the event is obtained and recorded directly by the person conducting the criminal prosecution action, without any external intervention from third parties, so that the evidentiary information is perceived by the representative of the criminal prosecution body directly, without intermediaries, which to the greatest extent minimizes the risk of their distortion. In the process of verifying testimony at the crime scene, the search for relevant traces is carried out on the basis of the statements of the person already interrogated, which draws attention to the objects and other circumstances of the event, which previously remained unnoticed by the person conducting the on-site investigation. In this context, the representative of the criminal prosecution body plays the role of an observer of the actions of the verified person, since from these actions valuable information can be obtained that would allow reconstructing a complete picture of the crime; 2) The question of the necessity of verifying testimony at the crime

scene is a strictly personal prerogative of the person conducting the criminal prosecution. In deciding to conduct this criminal prosecution action, the representative of the criminal prosecution body is guided not only by the existence of relevant information in the testimony of the persons, but also by his own conviction regarding the advisability of conducting this criminal prosecution action [17, p.48].

On-site investigation, unlike the experiment, does not imply indicating the place or the object linked to the investigated event, it is not accompanied by the presentation of testimony regarding the place or the object of the crime [5, p.650; 9, p.214-215]. An important condition for carrying out the verification of testimony at the crime scene is the participation of the already interrogated person from among the suspects, the accused, the injured parties or the witnesses. However, during the on-site investigation, the participation of persons from this category is not mandatory [21, p.362]. As N.V. Vlasenko and V.V. Stepanov noted: "the explanations of the suspect, accused, injured party or witness made during the on-site investigation, are of an indicative nature, without procedural significance" [15, p.17]. The information obtained during the on-site investigation subsequently determines the complex of criminal prosecution actions necessary for the investigation of the criminal act, including the verification of testimony at the crime scene.

One of the important aspects is the space within which each criminal prosecution action is carried out. Thus, in the case of the on-site investigation, all the valuable information necessary to determine the circumstances of the case is located on a relatively small area, allowing only the analysis of the direct mechanism of committing the crime. In contrast, the verification of testimony at the crime scene provides us with much more clues and reasons for reflection on what happened, because not only it helps understanding the mechanism of the event, but also the criminal activity related to the method of arrival and departure from the crime scene, the influence of the environment on the criminal behavior, providing detailed images of the preparatory part of the criminal act.

From a tactical point of view, the verification of testimony at the crime scene is distinguished by a more complex mechanism of development, with a specific approach, which often requires individualized treatment for each specific case, considering the characteristics of the person being interrogated. It also imposes a number of requirements on the representative of the criminal prosecution body, the fulfillment of which directly influences the efficiency and the results of the information obtained within this criminal prosecution action. Before making a decision on conducting the verification of testimony at the crime scene, it is necessary becoming aware of the need to conduct this criminal prosecution action. Holding the relevant information about the place where the event occurred, keeping in mind the peculiarities of this territory and having available the results of other criminal prosecution actions, the person conducting the criminal prosecution action must, primarily, take a number of organizational measures. First, to analyze in detail and understand the entire course of the criminal prosecution action, developing an action plan. Second, to set the target, the result of which will be the final goal of the verification of testimony at the crime scene. Third, although this criminal prosecution action is organized and conducted under one's leadership, that leader should not forget the active role of the person being interrogated in terms of demonstrating his/her behavior, as it occurred at the time of the commission of the crime, followed by the analysis and comparison of that behavior with the information already existing in the criminal case [17, p.50-51].

The difference between these two criminal prosecution actions also lies in the way of recording the progress and results obtained. In the report of the on-site investigation, the main attention is paid to the situation at the crime scene, and the objects discovered there should be described in detail and circumstantially, as they may confirm or deny the event that took place. In the case of verification of testimony at the crime scene, the situation is perceived and recorded in the report directly as worded by the verified person followed by the analysis of the behavior of that person, on the basis of which the mechanism of the crime is restored [17, p.52].

The verification of testimony at the crime scene and the interrogation. Among the evidence administered in the criminal trial, an important place is held by the depositions, the testimony [2, p.7]. The interrogation is a criminal prosecution action that consists in obtaining by an authorized person, in accordance with the procedure set up by law, testimony from a person who has information relevant to the criminal case under investigation [18, p.277]. Questioning (interrogation), viewed as a complex tactical activity, must be carried out considering certain factors: the legal provisions that regulate it, the applicable rules of forensic tactics, the person of the interrogated person, as well as the process of forming testimony in the mind of the interrogated person [7, p.8].

In the process of interrogation, the representative of the criminal prosecution body obtains from the interrogated person information regarding the investigated event, expressed verbally and not linked to the verification of their veracity. In fact, applying various forensic techniques and tactics tested in investigative practice, he/she stimulates the interrogated person to provide testimony regarding the circumstances directly or indirectly related to the investigated crime [20, p.410]. The verification of testimony at the crime scene is always carried out after the interrogation and is aimed at discovering data that were not fully presented during the interrogation. Therefore, the degree of completeness and veracity with which information will be obtained during the interrogation will influence not only the efficiency of verifying testimony at the crime scene, but also other criminal prosecution actions carried out within the criminal case. Interrogation is one of the main methods of obtaining information in a criminal case. During the verification of testimony at the crime scene, the interrogated person, in addition to the verbal exposition of the event, demonstrates also certain actions that took place in the real conditions of criminal activity. During the interrogation, one can only abstractly imagine what really happened, directly and immediately forming ideal images in one's own consciousness, generated by the testimony of the interrogated person.

Carrying out the verification of testimony at the crime scene significantly increases the chances of perceiving and understanding the investigated event, contributing to a deeper and more detailed identification of the circumstances of the case. Therefore, over this criminal prosecution action, one should try to reflect its conduct as completely and comprehensively as possible, regardless of the probative value that certain circumstances recorded in the report may have. This is important, because the law does not allow repeating the same criminal prosecution action with the same person in order to establish the same circumstances, unlike the interrogation. In the event of the emergence of new circumstances, the person already interrogated may be subjected to a new interrogation, and this can take place at any time during the criminal prosecution action, when necessary [17, p.53-54].

In the opinion of the authors M.N. Khlyntsov, N.V. Vlasenko and V.V. Stepanov, the

verification of testimony at the crime scene cannot be considered as a 'repeated' or 'secondary' interrogation at the scene of the crime, since, in the course of verifying this testimony, the interrogated person does not perform repeated operations related to the simple reproduction of information, but materializes a representation of the real image of the event. This is achieved by reproducing on the spot the circumstances and conditions of the investigated event, indicating objects, documents and traces relevant to the criminal case, demonstrating certain actions, as well as clarifying each fact, which is ultimately reflected in the report of the criminal prosecution action [15, p.26; 29, p.50].

We note that, despite the general rules for drawing up and recording information obtained in the course of a criminal prosecution action, the order and content of the report of the verification of testimony at the crime scene differs from the order and content of the report of the interrogation. Thus, the report of the interrogation records only the verbal testimony of the interrogated person, without specifying their positions, movements and gestures, while in the verification of testimony at the crime scene, attention is focused not so much on the speech of the verified person (on the dialogue), but on their actions, which allow the representative of the criminal prosecution body to judge in a more comprehensive way about the investigated event and, at the same time, to compare what he/she saw with the testimony previously obtained during the interrogation. If for the verification of testimony at the crime scene an important role is played by movement in space, accompanied by movements and gestures, it can be considered rational to use audio-photo-video recording means in this criminal prosecution action, in order to more fully convey what was observed, with these materials being attached to the materials of the criminal case. The interrogation can also be carried out with the application of technical means, but they will not fully visually reflect the scene of the event, which is successfully achieved in the process of verifying testimony at the crime scene [17, p. 54-55].

One of the varieties of the interrogation is the interrogation during the *confrontation* [23, p.36; 24, p.56; 27, p.44]. When contradictions are found in the testimony given in the same case by the persons interrogated, a confrontation is carried out, which is a questioning procedure in order to clarify the contradictions that exist between the testimony previously given by two or more persons [11, p.426]. Not every contradiction in testimony requires a confrontation, since significant discrepancies can be resolved by repeated interrogation or by other means that sometimes more reliably state the cause of their occurrence and make the necessary adjustments to the previously given testimony [5, p.609].

A very important and significant difference between these two criminal prosecution actions is the number of persons participating simultaneously and whose testimony will be verified. To conduct a confrontation, the participation of at least two such persons is required, while the verification of testimony at the scene of the crime is possible only with one of these persons and only with his/her consent.

As in the case of the verification of testimony at the scene of the crime, the confrontation also involves persons who have already been interrogated. But while in the decision to conduct a verification of testimony of an already interrogated person, the representative of the criminal prosecution body is guided by the desire to investigate and understand the mechanism of the crime, clarifying the existing circumstances and obtaining new information, in the process of confrontation the efforts of the representative of the criminal prosecution body are, first of all, focused on finding out the truth about

the controversial circumstances [26, p.27] or on clarifying the essential contradictions in the testimony of the two persons [30, p.124]. When making the decision to conduct a confrontation, the representative of the criminal prosecution body assumes great responsibility. First of all, he "must be convinced of the correctness, veracity of the testimony of one of the participants, in order to ensure that, during the confrontation, he/she will not be influenced by the person making false testimony". Secondly, the very mechanism of confrontation is very complex from a psychological point of view and requires skills to predict the likely behavior of the persons involved in the criminal prosecution, under conditions of full concentration and mobilization of all mental processes [28, p.161].

The difficulties mentioned may also arise during the verification of testimony at the crime scene, since the testimony previously given by the interrogated person is also subject to verification. However, for the representative of the criminal prosecution body, it is much easier to identify the falsity of the testimony of the participants, since there is direct contact with the place of the investigated event. From a psychological point of view, the verification of testimony at the scene is no less complex than the confrontation. The success of this action largely depends on the organizational skills of the representative of the criminal prosecution body, the ability to establish a psychological contact with the person whose testimony is being verified, as well as the ability to analyze and compare what was observed at the scene of the crime and what was mentioned during the interrogation [17, p.56-57].

The verification of testimony at the scene of the crime and the lineup. The lineup is an activity with a practical character intended for the identification of persons, corpses or objects by certain persons, who perceived them in circumstances determined by the commission of a crime or other legal fact with criminal implications [10, p.491]. The author R.S. Belkin believes that the essence of lineup consists in the fact that the identifier mentally compares the image of an object or person that has remained in his memory with the presented image, determining their belonging to a group or category [12, p.648]. Lineup is always preceded by an interrogation on the circumstances of the case, in which the identifier is invited to give explanations regarding the main characteristics of the object of interest. This procedure is mandatory, as it allows the selection of similar objects and clarification of the significance of the criminal prosecution action. The essence of the lineup lies in the fact that the identifier is simultaneously presented with at least three objects, which are similar in their characteristics or constructive features. In the framework of this criminal prosecution action, the identifier, by comparing the 'searched' objects to their mental image, determines the similarity or differences between these objects.

When verifying testimony at the scene of the crime, the circumstances of the criminal case are also identified, but in this case, the person whose testimony is verified does not select the necessary object from a set, but only provides a general picture (description) of the event that occurred.

Lineup can be carried out in a suitable place, at any time of the day or night, in any conditions, if they do not hinder the identification process. However, if the identifier has observed the searched object under specific conditions, it is necessary to create the conditions under which that person perceived the object in question in order to carry out the lineup [17, p.57-58]. As an important form of forensic identification, lineup is one of the most effective ways of identifying unknown bodies, determining the ownership of illegally stolen property, weapons and tools used in committing crimes, etc. [3, p.430].

Verification of testimony at the scene is carried out only at the crime scene pointed out by the person subject to interrogation. This criminal prosecution action can be carried out at any time of the day or night, depending on the convenience of the representative of the criminal prosecution body. The most important thing is that the place of its conduct corresponds to the place where the act took place. The verification of testimony at the crime scene is, by its procedural nature and content, much deeper and more comprehensive than the lineup, because it allows for a broader, more extensive and more complete understanding of the mechanism of the event that took place. While the lineup ends when the person making the identification recognizes the subject/object sought, briefly explaining its main features, the verification of testimony at the crime scene is not limited to this moment. When the person whose testimony is being verified at the crime scene points to a specific object, the representative of the criminal prosecution body gets the opportunity to better understand the mechanism of the crime: to study the surroundings, determine the circumstances that occurred at the time of the crime, discover traces and objects that were not found during the on-site investigation, i.e. mentally reconstruct the real picture of the event.

In the lineup report, the information is concentrated only within the limits of the testimony of the person participating in the criminal prosecution action in relation to the identified object and objects similar to it, with an indication of the distinctive features that allowed identifying the necessary object from a large number of objects and, if necessary, with a description of the circumstances in which the identification was carried out. In the report of verification of testimony at the crime scene, the information about the event is reflected much more fully, since, in addition to the objects discovered at the scene, the report also contains data on how the participants moved, the characteristics of the place where the testimony is verified, and the actions of the participants in the criminal prosecution action [17, p.58-59].

Conclusions. Based on a systemic approach, combining several elements of criminal prosecutions actions related to the verification of testimony at the crime scene, such as the experiment, the interrogation, the on-site investigation and the lineup allowed highlighting its complex character from a procedural and tactical aspect.

Analyzing the verification of testimony at the crime scene and the interrogation, we found an important difference that is observed in terms of their scope in space. If the interrogation provides the representative of the criminal prosecution body with information about the event in verbal form and is in no way related to the verification of their veracity at the scene of the criminal offense, then the verification of testimony at the crime scene, in addition to verbal testimony regarding the event, contributes to the formation of 'ideal' images in the consciousness of the representative of the criminal prosecution body, since it is carried out not in his/her office, but at the scene of the crime.

The content of the verification of testimony at the crime scene partially overlaps with the on-site investigation. In particular, it is about the correspondence of the place of the verified event with the use of the same method of knowledge – the observation, through which a possible image of the crime is built 'mentally'. But if, within the framework of the on-site investigation, the representative of the criminal prosecution body investigates the crime scene without the intervention of any outside person, then the investigation of material circumstances within the framework of the verification of testimony at the crime scene is already carried out with the direct, immediate participation

and role of the person involved in the commission of the criminal act.

A certain degree of similarity can be observed between the verification of testimony at the scene of the crime and the lineup, since in both cases the circumstances of the case are discovered by identification, but, in the case of the verification of testimony at the scene of the crime, the person whose testimony is subject to verification does not select the necessary object from a group, which is done in the case of the lineup, but provides an overview of the event that took place.

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ENDOGENOUS AND EXOGENOUS FACTORS IN THE GENESIS OF SCAMS

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Summary

The article analyses the complexity of the causality of the crime of scam, highlighting the fact that it cannot be attributed to a single determining factor, but results from the interaction of multiple criminogenic causes. The author emphasises the probabilistic nature of social influences on criminal behaviour, pointing out that the same factors can produce different responses depending on individual characteristics and the social context.

The criminal phenomenon of scam, characterised by flexibility and adaptability, is constantly expanding and diversifying, requiring a complex approach to the development of prevention and control strategies. The analysis of the criminogenic factors leading to the commission of scam shows that this type of crime is the result of a series of interdependent influences. The article provides a multidimensional perspective on this type of crime, emphasising the importance of the interaction between endogenous (individual, psychological) and exogenous (social, economic, political) factors in facilitating or deterring fraudulent criminal behaviour.

In this context, it emphasises the need for an integrated approach, taking into account both the individual characteristics of offenders and the environment in which they operate. An effective fight against fraud requires not only punitive measures but also preventive measures based on financial education, advice, information and prevention.

Keywords: criminogenic factors, endogenous factors, exogenous factors, scam, crymogenesis, casuality.

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Introduction. Scam is an ever-growing criminal phenomenon characterized by high adaptability to economic, technological and social changes. This flexibility has led to the diversification of fraud methods and increased complexity of criminal actions, which requires a multidimensional criminological approach to understand and prevent the phenomenon.

An essential aspect in the criminological analysis of scams is the identification of criminogenic factors that influence the genesis and development of this type of crime. The study of the interaction of endogenous and exogenous factors in determining the origin of scams is of primary importance, especially in the context of the diversification of the methods of action of criminals and the virtually unlimited number of potential victims, as it allows us to understand the mechanisms that favor the emergence and perpetuation of these crimes.

A multidimensional criminological analysis, combining psychological, economic, legal and social perspectives, is necessary to determine the relationships between crim-

inogenic factors and the methods used by criminals. This approach helps to identify the fraudsters, the vulnerabilities of the victims and the facilitating contexts. This analysis can form the basis for an effective prevention strategy, including both proactive and reactive measures.

Methods and materials applied. In developing the article, the author used a complex approach, based on documentary, comparative and interdisciplinary methods of analysis, to examine the causality of the crime of swindling. The study integrates perspectives from criminology, sociology, psychology and economics, highlighting the influences of endogenous and exogenous factors on criminal behavior. This approach allows a detailed understanding of the dynamics of crime and contributes to the foundation of effective strategies to prevent and combat this type of crime.

Discussions and results obtained. Scam is the direct result of human behavior, influenced by predisposing personality traits as well as social, political, economic and cultural factors that favor the development and perfection of fraud methods. Simply identifying the factual picture of the crime of scam and its development does not answer the question of how to prevent crime, because it is dealing with the data that is the end in itself, not the determining factors. Knowing the factors that determined the commission of fraud is important for analyzing and explaining the criminogenesis of scams.

Causes express the types of determinants that led to the commission of scams. The relationship between cause and crime is genetic in nature, since the cause generates the crime as a natural consequence of the crime, or the cause is a phenomenon that naturally generates another phenomenon – the effect. Causation in the sphere of social life, unlike natural causation, is probabilistic which means that social phenomena, including the criminality of scams, cannot be explained by a rigid relationship of chance, but by a complex network of interdependent factors.

At the same time, the occurrence of scams is not the result of the mere existence of the cause, regardless of its nature, but becomes possible in the context of circumstances that favor the commission of the unlawful act, i.e. criminogenic conditions which are the set of phenomena that, although they cannot give rise to the criminal phenomenon by themselves, create the necessary context for its occurrence [1]. The totality of the causes and conditions *sine qua non* constitutes a complete cause of the crime. In this context, the link between the element of cause and condition will only take effect in a specific context that triggers the criminal act [3].

Scam crime is a complex social phenomenon as it originates from the dynamics of social life and requires a multidimensional approach to be understood and managed effectively. It is not determined by a single factor, but results from a combination of influences that favor or amplify criminal tendencies.

Determining factors include the cause and conditions of a phenomenon [3], or are the elements that create an environment conducive to the development of crime. They do not act in isolation, but in combination being interwoven with each other, which increases their determining power. The relationship between them is such that a change in one factor leads to a change in a phenomenon [6].

The factors that determine the phenomenon of scams can be divided into two broad groups: general factors that indirectly influence the commission of scams and the fight against it and determine not only the commission of scams, but also crime in general, and special factors that act directly on scams [4].

The *general factors of scams* are:

– E*conomic*: the level of economic development of the state, economic crisis and

instability, the level of poverty, economic inequality, market instability, the existence of shadow economy, access to resources, etc.;

– *Social*: family, education, community, social infrastructure, social infrastructure, belonging and reference group, cultural norms, social values, media, etc.;

– P*olitical*: political instability, ineffective governance, domestic and foreign political competition [4], dysfunctional judiciary, political corruption, respect for human rights, ineffective security and law enforcement policies, state of war, etc.;

– *moral-spiritual*: moral upbringing, spiritual values and ethical convictions of a person, religious beliefs, specific ethnic mentality [4].

The *special factors of scams* are:

– Lack of effective regulation and control of economic and financial activities, lack of transparency in financial transactions, poor verification of financial information, mismanagement of financial institutions;

– Unstable economic environment, financial difficulties, existence of a 'black market', unemployment;

– Loyalty to criminal reference groups;

– Major latency of scams;

– Advanced technology and digital communication environment;

– Lack of infrastructure to prevent scams;

– Impulsive and risky behavior, etc.

Factors are anything that influences the phenomenon of scams, either directly or indirectly. They can have a positive or negative impact on a process and can be of various types (social, economic, biological, etc.). For example, a poor economic environment may be a factor, but not all people in that environment become fraudsters. Respectively, all determinants are factors, but not all factors are determinants.

The criminality of scams cannot be explained by a rigid and unique causal relationship. Scams evolve according to a number of factors that influence both the methods used by criminals and the level of sophistication of the frauds.

Endogenous factors of scams refer to the internal aspects of the individual that contribute to the formation of criminal behavior that is oriented towards obtaining benefits through deception and/or abuse of trust. These include psychological traits, personal motivations and behavioral predispositions, which influence the decision to engage in such acts.

Contemporary criminology, based on research and theories in the field of psychology, identifies three main categories of psychological factors that influence criminal behavior:

– M*otivational factors*: these are determinants and propulsive factors, which generate and propel an individual's actions. These include motives, needs, tendencies, which can be positive or negative;

– C*ognitive (cognition) factors*: the process of understanding and interpreting the individual's situation. Cognitive factors are orienting and influence the ability to evaluate factual states. They include mental representations, internal imagery, and intellectual abilities to analyze and devise courses of action in the criminal context. For example, a con man may plan a criminal act based on his knowledge and skills;

– C*onative (movement) factors*: these are the factors that put into practice the desires and intentions formulated by the individual. In this context, the conative factors are those factors that favor the transformation of intentions into concrete actions [1].

Instincts, as part of motivational factors, are innate, primal reactions that can un-

derlie criminal actions when interacting with social, economic and psychological factors. They manifest as tendencies and impulses, which can be shaped by life experiences, education and social context [1]. They do not automatically lead to committing fraud, but under certain social, economic and psychological conditions they can become triggers.

In the case of scams, instincts manifest themselves as:

Self-preservation tendency: it represents the primary need of the individual to ensure survival and safety. In conditions of economic hardship, financial insecurity or lack of essential resources, some individuals may resort to scams as a means of earning income and satisfying their basic needs.

Acquisitiveness tendency: reflects the natural human tendency to accumulate material goods and resources. When legal earning opportunities are limited or perceived as insufficient, the individual may be tempted to resort to fraud in order to obtain quick financial benefits, considering swindling as an easier solution than honest methods of work.

Self-assertiveness tendency: causes individuals to seek validation, prestige and recognition from others. When a person feels that he or she cannot achieve the desired success or status through legal means, he or she may resort to scams, manipulation or abuse of trust to create an image of success and gain the appreciation of others [1].

The behavior of fraudsters is also determined by needs generated by various deprivations. Scams, like other criminal behaviors, can be understood as a response to an individual's unmet needs. Be it the basic need to survive or the desire for status and success. Needs are the foundation of all interests. The former are physiological and biological in nature, while interest is the result of the individual's cognitive processes and is oriented towards changing and improving living conditions to ensure the satisfaction of these needs [9]. Thus, interest is the individual's direction of action, aiming to maintain or change his or her situation in order to create the necessary conditions for the satisfaction of his or her own needs [7].

In this context, tendencies represent the primary drive, needs fuel motivation, and interest shapes strategy, all of which contribute to shaping the behavior of the con artists. These states have a logical sequence, each one deriving from the other, grounded in the individual's reasoning and cognitive process.

Reasoning is not an innate ability, but the result of socialization and interaction with the environment, including family, school, reference groups and society in general. As part of this process, the individual adopts patterns of thinking that are specific to the society in which he or she lives, influenced by the cultural, moral, religious and historical aspects of that society [9].

The conative component transforms the cognitive and motivational factors into a concrete system of actions, determining not only the intention, perseverance in the realization of goals, but also the adaptability and perseverance of the con artist in the conduct of criminal activities. Unlike impulsive offenses, scams require planning, self-control and behavioral flexibility. Thus, scam is not a random act, but the result of a complex combination of psychological traits that determine how the offender plans and executes the deception in order to obtain material and psychological benefits.

Thus, swindling is a well-defined complex psychological process, and the formation of criminal behavior is a complex and long-lasting process influenced by a variety of internal factors. These factors, considered individually, may represent distinct causes which, in certain favorable circumstances, may lead to the commission of a crime.

Exogenous factors of scams are influences external to the individual that contribute to the emergence and development of crime, without being directly responsible for the

commission of a crime. They represent the individual's macro- and micro-environment.

The macro-environment refers to the wider social, economic, cultural and political context that influences the behaviors and attitudes of individuals and groups in society, which indirectly but significantly influence how individuals perceive the world around them and how they choose to act.

Economic factors relate to the state's economic conditions, financial crises, inflation, high unemployment, high levels of poverty, etc. Fraud, being an integral part of property crime, is predominantly aimed at obtaining material and financial benefits. The basic motive of this type of crime is material interest, and economic instability and lack of confidence in the future have a significant impact on the development of swindling, which is an indicator of changes in the economy [4].

The digitalization of the economy has created new fertile ground for scams. People are more and more willing to invest in cryptocurrencies, buy online from untrusted sources or trust quick transactions without rigorous checks. In an accelerating pace of economic change, where the possibilities of information technology often outstrip regulation, fraudsters are constantly finding new ways to exploit the lack of information and the desire for quick gain.

The development of scams is not only driven by poverty and economic inequality, but also by the vulnerability of victims who, for various reasons, including financial difficulties, become easy targets for fraudulent schemes. In times of economic crisis, when unemployment rises and people feel financial uncertainty, scams multiply as people become more vulnerable to promises of get-rich-quick schemes, whether pyramid schemes, fake investments or 'one-off' opportunities promising spectacular returns.

In the case of scams, however, standard of living and poverty do not play a decisive role [4]. Moreover, lack of employment is not the determining factor in committing a scam. Scams, as part of "white-collar crime", are often committed by people who are not in a precarious financial situation, but rather by individuals who occupy privileged social and professional positions. While poverty may be a factor in property crime in general, specific scams are more likely to be driven by psychological, economic and social factors that go beyond simple financial necessity.

Social factors such as social crises, societal structure, social inequalities and migration, profoundly influence scamming. In a consumer society in which moral values are often relativized, quick material success is promoted as the ultimate goal, regardless of the means used. This mentality favors the proliferation of scams, which are perceived not only as opportunities for illicit gain, but also as a means of social climbing.

Constant exposure to opulent lifestyles, intensely publicized through social networks and media, creates unrealistic expectations and amplifies the desire for get-rich-quick. In this context, the digital environment becomes an essential tool for fraudsters, facilitating the rapid dissemination of scams and giving them the appearance of legitimacy.

At the same time, periods of social crisis, conflict and political and economic transitions contribute to the vulnerability of the population. Migration, whether in search of work or as a result of economic hardship, exposes individuals to the risk of falling victim to fraudulent schemes such as bogus job offers, speculative investments or non-existent financial aid.

Political factors refer to political instability and competition of national and foreign politics [4]. Political instability has a direct impact on the crime phenomenon by decreasing the level of trust in state institutions, citizens are confused about tomorrow. Political

games and the juggling of discourses with a negative narrative increase tension in society, raising the level of vulnerability of citizens.

The war in Ukraine has amplified these problems, adding new dimensions to the phenomenon of scams in the Republic of Moldova. First, the massive influx of Ukrainian refugees has created new opportunities for criminals, who have exploited the situation through various fraudulent schemes, including scams related to housing, fictitious jobs or non-existent financial aid. Refugees' vulnerability, lack of information and urgent need for assistance made them easy targets for fraudsters.

Moreover, in the context of the economic sanctions imposed on Russia, Moldova has become a breeding ground for money laundering and other illicit financial activities, including through the use of criminal structures specialized in cross-border scams. In addition, the war has facilitated an increase in misinformation and online propaganda, which has allowed the emergence of new types of scams based on emotional manipulation of citizens.

Legal and organizational factors influence the development and spread of the phenomenon of scams, either through legislative shortcomings or poor enforcement of existing legal rules. A legal framework that is weak, unstable or ill-adapted to new forms of scams can encourage the emergence and proliferation of scams, providing opportunities for criminals to exploit legal loopholes and diminishing the authorities' capacity to respond.

An unstable or confusing legal framework provides opportunities for fraudsters to adapt and exploit loopholes. Criminal legislation needs to keep pace with new methods of fraud, especially in the context of digitization and globalization, where they are becoming increasingly sophisticated. In the absence of legislative updates clearly regulating new fraud schemes, enforcement of sanctions may be difficult or ineffective.

Equally, it is important to highlight the overburden on courts and prosecutors who have to deal with a huge volume of cases, many of them extremely complex. The sophisticated nature of the scams, often involving elaborate financial schemes, international transactions and the use of digital technologies, requires extensive investigations, detailed financial analysis and specialized technical expertise.

Legal uncertainty and uneven interpretation of criminal rules affect the effectiveness of the fight against scams. Unclear interpretation of criminal law rules also makes it difficult to classify offences and to establish the legal liability of persons involved in fraudulent schemes.

Technological factors are a distinct set of exogenous factors which contribute significantly to the development and diversification of scams. The rapid advancement of information technologies has profoundly reshaped the way people interact, communicate and transact, facilitating not only the evolution of society but also the expansion of crime. In this context, digitization, anonymization and global access to users have created an enabling environment for fraudulent activities.

The expansion of the internet and the widespread use of smart devices have provided fraudsters with sophisticated tools to carry out their fraud schemes. In addition, the virtual environment allows criminals to operate under false identities, using anonymous servers, encryption networks and other technologies that ensure invisibility and impunity.

The development of artificial intelligence and automation has led to improved fraud methods, enabling fraudsters to carry out attacks that are more precise and harder to detect. In parallel, social networks are being heavily exploited to spread fraudulent schemes, exploiting the psychological vulnerability of users through advanced social engineering techniques.

The micro-environment, as opposed to the macro-environment, is the individual's closer and more influential social circle. It includes family, friends, colleagues and other small groups with whom the individual interacts frequently, and their influence may be determined by the norms and values imposed by these groups. In the case of scams, the micro-environment is often the factor that can encourage or even shape fraudulent behavior.

The family plays a key role in shaping individual behavior and has a significant impact on the social and moral development of the individual. Determining factors include socio-economic status, family structure (full or single-parent family, united or disunited), emotional climate, parenting methods, and the child's position within the family [10].

A fundamental aspect is the pattern of behavior that parents display in social relationships, which has both an immediate effect on the child and a long-term influence. Children exposed to a family environment in which ethical and legal norms are ignored or relativized may develop a high tolerance for breaking social rules. Also, in families in which materialistic values are emphasized at the expense of moral principles, there is an increased risk that young people internalize the idea that financial success justifies the means used, including recourse to cheating or other fraudulent practices.

Thus, the family not only directly influences an individual's behavior in childhood, but may also contribute to the development of criminal predispositions that manifest later in adult life. In this context, crime prevention policies should include measures to support families in promoting healthy educational models based on responsibility, integrity and respect for social and legal norms.

School is the second most important micro-environmental factor in shaping individual behavior. It is important in the socialization process, contributing to the internalization of social values, norms and rules. The school environment significantly influences the child's harmonious integration into society or, on the contrary, it may foster the development of deviant behavior, depending on the quality of education provided, interpersonal relations and the general climate in the institution.

A determining factor in this context is the influence of the peer group. Belonging to a deviant environment or group may encourage undesirable behaviors and involvement in illicit acts, including cheating or other economic and social crimes.

Similarly, *co-workers* and the nature of work tasks also influence the individual, favoring certain deviant behaviors. As a rule, the moral traits of coworkers are transmitted to other employees, shaping perceptions of risks and benefits, so that individuals may underestimate legal consequences, being encouraged by negative role models around them [11]. Thus, the micro-environment of work in which the rush for gain predominates, the desire to get suddenly rich through the use of manipulation and speculation, has a major impact on the development and reinforcement of criminal behavior, being a determining factor in the commission of scams.

Therefore, endogenous and exogenous factors are relevant in conditioning or determining the commission of criminal acts due to their frequency and importance. Although each of them may represent an independent cause of committing scams, most of the time, the factors interact and, in combination, increase the risks and the probability of criminal behavior, and knowledge of the criminogenesis of scams allows the development of effective measures to prevent the criminal phenomenon and will help reduce the vulnerability of victims [10].

Conclusions. The causality of crime is an essential topic in criminology, because explaining the factors that determine crime, including scams, is fundamental for their prevention. In the social sphere, causality is probabilistic, which means that not all those

exposed to the same influences end up committing crimes. The criminality of scams is not determined by a single factor, but results from a complex combination of interdependent influences acting simultaneously and creating a favorable context for the occurrence of this type of crime.

Studying the criminogenic factors of scams, both endogenous and exogenous, provides a clearer insight into the mechanisms that generate crime. These factors create the breeding ground for scam criminality by influencing criminal predispositions and opportunities.

Importantly, no single factor acts in isolation, and the mere existence of criminogenic conditions does not automatically lead to offending. Scam is the result of a complex interplay between the individual characteristics of the offender, the social, economic, political, etc. context and the existing criminal opportunities. Therefore, the approach to the phenomenon must be multidimensional, taking into account both the prevention of criminogenic causes and the reduction of social vulnerabilities that allow this type of crime to develop.

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LEGAL-CRIMINAL ANALYSIS OF THE CRIME OF FALSE IDENTITY

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Summary

In the digital age and amidst the rapid growth of online interactions, identity protection has become a major challenge for both criminal and civil legislation. The exponential increase in the use of social media platforms, electronic services, and remote communication tools has enabled new means by which a person's identity may be falsified or used fraudulently. The illegal presentation under a false identity, or assigning such an identity to another person, whether through official documents or digital instruments (e.g., online accounts, email addresses, or phone numbers), raises complex legal issues concerning criminal liability, the protection of individual rights, and information security.

This article aims to provide a criminal legal analysis of the act of illegal presentation under a false identity or the assignment of such identity to another person using official documents, user accounts on social platforms, email addresses, phone numbers, access cards, or other information society services. It will particularly highlight the distinction between fraudulent use of identity and the use of pseudonyms that do not infringe upon others' rights.

Keywords: identity fraud, criminal liability, criminal-legal analysis, false identity.

Introduction. The identification of individuals by name is as old as the emergence of social life itself. From the earliest times, the name has been one of the fundamental elements by which natural persons have been individualized within society [1, p.11].

Legal scholars I. Dogaru and S. Cercel assert that to "identify" a natural person means to "ascertain their identity", to distinguish the individual within society and within the totality of social relationships in which they engage. This necessity arises throughout an individual's life, not only in their legal life but also in their "extrajudicial" existence [2, p.140-141]. A person holds the potential to be a subject of rights in all branches of law, and accordingly, their identification is necessary and undertaken across all these branches. Thus, within the legal domain, identification is all-encompassing. The legal system cannot, in the normal course of civil transactions, allow for the "concealment of identity" whereby anonymity constitutes an exception. The concrete designation of the holder of a subjective right or the party bound to fulfill an obligation effectively constitutes their legal identification. Hence, identifying a natural person means the individualization of a human being, that is determining their legal status and identity [2, p.108].

In accordance with Article 36(1) of the Civil Code of the Republic of Moldova, "every natural person has the right to a name established or acquired under the law". The Moldovan legislature has considered this means of identification to be paramount, further stipulating in Article 37(3) of the same legislative act that, "whoever uses another's name is liable for all confusion or damages resulting therefrom. Both the bearer of the name and their spouse or close relatives may object to such use and seek reparation for the damage caused" [3, Art.36-37].

In this regard, it is to be appreciated that in any country, every natural person should possess a defined identity, recorded in an official document, which serves as proof of the person's actual existence and which produces numerous legal consequences. A person's identity holds exceptional significance in the relationships established between individuals, as well as between individuals and public authorities.

These relationships are protected by numerous legal norms, including criminal provisions [4, p.144]. Consequently, any harm to public trust in the veracity of a person's identity represents a significant social danger. For this reason, on June 6, 2024, the Parliament of the Republic of Moldova adopted Law No.136 amending various legislative acts, thereby supplementing the Criminal Code with Article 177[1], titled "Identity Fraud" [5, Art.38].

Identity fraud constitutes a dangerous and unlawful practice involving the creation of a false identity entirely distinct from the real one, with the aim of obtaining confidential information or committing other criminal acts. This method is frequently used to conceal the true identity of the perpetrator, thus facilitating illicit activities such as espionage, fraud, or other forms of manipulation of social, economic, or political systems. Essentially, identity falsification serves as a cover that enables illegal acts to be committed without detection, thereby endangering the safety and security of individuals, institutions, and society as a whole. Additionally, this type of offense may have devastating effects on public trust, adversely affecting interpersonal relationships and the integrity of official institutions.

Therefore, according to the Moldovan legislator, the offense of identity fraud consists of the illegal presentation under a false identity or the attribution of such an identity to another person through the use of official documents in the name of another, the registration and/or use of user accounts on social networking platforms, web portals, email addresses, phone numbers, access cards, or other information society services. This is with the exception of the use of pseudonyms that do not infringe upon another's identity or the pseudonyms of other data subjects, done for the purpose of deceiving or maintaining deception in order to produce legal consequences [6, Art.177[1]].

Thus, the illegal presentation under a false identity or the attribution of such an identity to another person infringes upon the civil rights of the individual, in accordance with the provisions of Article 37(1) and (3) of the Civil Code, which state that every person has the right to the protection of their name. Whoever uses another person's name is liable for all resulting confusion or damage [3, Art.37].

A person's name is a non-patrimonial personal right, characterized by the traits of absolute rights. Accordingly, all individuals are under a negative obligation to refrain from acts that would violate the name holder's right, which consists of the respect and protection of that name.

The European Court of Human Rights, in its jurisprudence, has ruled that a name, as an identifying attribute of a person and as a signifier of familial ties, falls within the

scope of the concept of private life. The guarantee provided under Article 8 of the European Convention on Human Rights is, in essence, intended to ensure the development of everyone's personality in relation to others, free from external interference [7, Art.8]. Likewise, under Article 28 of the Constitution of the Republic of Moldova, the state respects and protects intimate, family, and private life.

The European Commission of Human Rights provided the following interpretation of the notion of private life: the right to respect for private life is the right to intimacy, the right to live as one chooses, protected from public exposure [8, p.62]. The individual's right to self-determination, as well as their right to protection of intimate, family, and private life, carries some of the most remarkable and far-reaching practical and legislative implications [9, p.77]. Interpretive literature regarding these notions, as found in the International Covenant on Civil and Political Rights, shows that respect for intimate and private life protects a distinct sphere of human existence and autonomy, which does not extend to the realm of the freedom and private life of others, and outlines the following essential aspects [10, p.294-295] for understanding the concept of intimate and private life:

• *Identity* – a sphere of individual existence that entails the protection of life, physical and mental integrity, freedom of conscience and thought, and the recognition of legal personality. The protection of private life also includes the safeguarding of the personal qualities of human existence and the way a person expresses their identity (for example, name, clothing, hairstyle, gender, feelings, and thoughts).

• *Intimacy* – the non-disclosure to the public of a person's characteristics, actions, and personal data. In determining the degree of privacy of certain information, a range of factors must be considered, including the individual's specific conduct and subjective emotional experiences. In a narrow sense, intimacy is ensured through respect for the home and correspondence, as well as the protection of personal data. In a broader sense, intimacy is also expressed through respect for the confidentiality of confessions and the guarantee of secrecy, for example, the secrecy of individual voting.

Based on the points outlined above, it is important to note that Article 8 of the Convention has a horizontal characteristic, meaning that it protects individuals not only against arbitrary interference by public authorities, but also against violations committed by private people. Thus, states may adopt measures aimed at ensuring respect for private life even in the context of relationships between individuals. This is also applicable to the protection of the right to one's image and name against abuses by third parties (see Schüssel v. Austria No.42409/98, of 21 February 2002) [11, para.27].

Accordingly, the legislator has determined that the *general legal object* of the offense described in Article 177[1] of the Criminal Code – which falls under Chapter V, "Offenses against political, labor, and other constitutional rights of citizens" of the Special Part of the Criminal Code – consists of social relations related to the exercise of constitutional rights of citizens.

The *special legal object* of this offense concerns social relations related to the exercise of the right to intimate, family, and private life, in accordance with Article 28 of the Constitution.

It is also important to highlight that the offense provided under Article 177[1] of the Criminal Code has both a non-material (immaterial) and a material object.

The *immaterial object* of the offense is the information protected by law regarding a person's identity, which, in a broader sense, encompasses personal data. In this regard,

Article 3 of Law No.133/2011 on the Protection of Personal Data defines personal data as any information relating to an identified or identifiable natural person (the data subject). An identifiable person is someone who can be identified, directly or indirectly, by reference to an identification number or to one or more elements specific to their physical, physiological, psychological, economic, cultural, or social identity [12, Art.3].

The *material object* of the offense stipulated in Article 177[1] CC, consists of official documents, user accounts on social media platforms, web portals, electronic mail addresses, telephone numbers, access cards, or other services of the information society.

The term "*official document*" should be understood as a document that:

– Contains information that has been developed, selected, processed, systematized, and/or adopted by official bodies or individuals, or made available to them in accordance with the law by other legal subjects;

– Certifies facts that have legal significance;

– Circulates within a system of registration, strict recordkeeping, and circulation control [13, p.41-42].

Additionally, the term "official document" also includes electronic documents. According to Article 2 of the Law on Electronic Identification and Trust Services, adopted by the Parliament of the Republic of Moldova on May 19, 2022, an electronic document is defined as content in electronic form, particularly in the form of text, or audio, visual, or audiovisual recordings, to which an electronic signature or seal has been applied [14, Art.2].

However, the notion of an "official document" refers not only to documents issued by public authorities, but also to those submitted to public authorities.

It should be emphasized that documents originating from private individuals must also be considered official documents when such documents are subject to a public authentication procedure. It is precisely this procedure that confers upon the document an official character, meaning it becomes a matter of public law. This includes, for example, a power of attorney issued by a natural person to another individual or legal entity, which is authenticated by a notary or a duly authorized official. Furthermore, documents from private individuals are to be regarded as official documents when such documents are formally received by a public legal entity, and subsequently remain at its disposal in connection with resolving matters addressed in the submitted documentation [15, p.1109-1110].

Apparently, in the case of the offense under analysis, the documents that would serve to establish a person's identity and that meet the conditions of an official document would, at first glance, be identity documents. According to Article 1(1) of Law No.273/1994 on identity documents within the national passport system, the identity documents in this system include: all types of passports, identity cards, residence permits, travel documents for stateless persons (under the Convention Relating to the Status of Stateless Persons of September 28, 1954), refugee travel documents (under the Convention Relating to the Status of Refugees of July 28, 1951), and documents issued to beneficiaries of humanitarian protection [16, Art.1]. In addition, a driver's license can also be considered an identity document. It is issued in accordance with the Regulation on the Procedure for Obtaining the Right to Drive Vehicles, the Issuance, and Validity of Driving Licenses, approved by Government Decision No.181/2022.

Additionally, other documents that confirm a person's identity and meet the re-

quirements of an official document may include student cards issued by relevant educational institutions, pensioner IDs, and employee IDs, among others.

A "*user account on social media platforms*" is understood to be an access unit within a social networking platform, created and managed to allow a user to interact with the respective online services or informational resources. A user account involves the registration and storage of information used to identify and authenticate the user, such as a username, password, or other authentication data. It may also include personal data or the history of the user's interactions within that system.

A social network is a web-based service designed to create virtual connections between users, for social, commercial, political, or educational purposes. Thus, a social network is understood as an informational network of Internet users, based on certain websites where users can register and interact with other already-registered users.

The notion of "*electronic mail*" is defined by the Moldovan legislator in two separate normative acts. According to Article 2 of Law No.241 of 15 November 2007 on Electronic Communications, electronic mail refers to any message – text, voice, or containing sound or images – sent via a public electronic communications network and which can be stored in the network or in the recipient's terminal equipment until it is accessed by the recipient [17, Art.2] The same definition is provided in Article 4 of Law No.284 of 22 July 2004 on Information Society Services [18, Art.4].

As for the term "*telephone number*", it is not explicitly defined in the legislation of the Republic of Moldova. However, two related concepts are regulated by both national and European legislation: 1) A "geographic number" refers to a number within the National Numbering Plan, in which part of the digits have geographical significance and are used to route calls to the physical location of a network terminal; 2) A "non-geographic number" refers to a number within the National Numbering Plan that does not have geographical significance. These include, among others, mobile phone numbers, toll-free numbers, and premium-rate numbers [17, Art.2; 19, Art.2 let. d) and f)].

Likewise, the term "*access card*" is not defined in national legislation. However, an access card generally refers to a physical device (usually a plastic card or another type of electronic medium) used to grant a person access to a particular system, location, or computer network. The access card typically contains authentication data or encrypted information (such as a code or chip) that allows the user to gain authorization to enter a restricted area or interact with a protected system. Frequently, the access card is integrated into an access control system, which manages permissions based on the authorizations assigned to the individual.

The final concept, which also constitutes the material object of the offense stipulated in Article 177^1 of the Criminal Code, is the information society service. According to Law No.284 of July 22, 2004 on Information Society Services, an information society service is defined as any service provided for remuneration, at a distance, by electronic means, and at the individual request of the recipient of the service, including online sales of goods. Information society services are not limited exclusively to services that result in the conclusion of online contracts. As long as they constitute an economic activity, they also include services that are not remunerated by those who receive them, such as services that provide online information, commercial communications, or services that offer search, access, and data retrieval tools. Also considered information society services are those that involve the transmission of information via an electronic communications

network; the provision of access to such a network or the hosting of information supplied by the recipient of the service. Point-to-point services, such as video on demand or the provision of commercial communications via electronic mail, are likewise considered information society services.

The following do not constitute information society services, within the meaning of this law:

a) Services provided in the physical presence of both the provider and the recipient, even if this involves the use of electronic equipment;

b) Services with material content, even if delivered through electronic devices;

c) Services rendered without the use of the internet (offline services), such as the distribution of software on storage devices;

d) Services not provided via electronic data processing and storage systems, such as:

– Voice telephony services;
– Fax/telex services;
– Services provided via voice telephony or fax;
– Direct marketing by telephone or fax.

e) Services transmitted by data transfer without individual request, intended for simultaneous reception by an unlimited number of individual recipients (point-to-multipoint transmission), such as:

– Transmission or retransmission of audiovisual broadcasting services;
– Teletext [18, Art.4].

The **objective element** of the offense provided in Article 177[1] of the Criminal Code has the following structure: a prejudicial act that may take two forms. The first form is the presentation under a false identity through inducement or maintenance in error, and the second form is the attribution of a false identity to another person.

It is important to note that the first form of the prejudicial act consists of two actions:

a) The main action, which is the presentation under a false identity;

b) The adjunct action, which is the inducement of a person into error or maintaining that person in error.

Inducement into error refers to the act of deliberately or negligently creating a false perception of reality, thereby causing another person to adopt a particular course of action based on a mistaken belief. This can be achieved through false statements, relevant omissions, exaggerations, or other means that affect the person's free and informed consent.

Maintenance in error involves failing to correct a mistaken belief that a person already holds, with the purpose of influencing them to act in favor of the one maintaining the error. This can manifest through fraudulent silence (intentional omission of relevant information) or through tacit confirmation of false information.

Additionally, the legislator, within the text of the provision, has outlined the methods of committing the offense, which are as follows:

a) Presenting oneself under a false identity by using official documents bearing the name of another person, through inducement or maintenance in error;

b) Presenting oneself under a false identity by registering and/or using user accounts on social media platforms or web portals, through inducement or maintenance in error;

c) Presenting oneself under a false identity by registering and/or using email addresses, through inducement or maintenance in error;

d) Presenting oneself under a false identity by registering and/or using a phone number, through inducement or maintenance in error;

e) Presenting oneself under a false identity by registering and/or using access cards, through inducement or maintenance in error;

f) Presenting oneself under a false identity by registering and/or using information society services, through inducement or maintenance in error.

With respect to presenting oneself under a false identity by using official documents bearing the name of another person through inducement or maintenance in error, this should be understood to mean that the perpetrator presents themselves under an identity other than their own and additionally uses an official document in the name of another person. These actions are carried out by means of inducing or maintaining a person in error. In this regard, the legislator did not specify whether the false presentation must occur before a public authority or a private entity. However, it did explicitly require the presence of prejudicial consequences, in this case taking the form of legal consequences, which are subject to analysis under the subjective element of the offense.

Furthermore, presenting oneself under a false identity through the registration and/or use of user accounts on social media platforms or web portals, by means of inducement or maintenance in error, is understood to mean that the perpetrator, knowing the personal data of another person, enters that person's data – rather than their own – when registering a user account on a social media platform. Thus, the perpetrator presents themselves on the platform using another person's identity, accompanied by the act of inducing or maintaining the error. The same actions apply to the registration and/or use of email addresses, phone numbers, access cards, or services of the information society. As previously stated, the legislator made it clear in all such cases that prejudicial consequences must result, specifically the production of legal consequences, which, as previously noted, falls within the scope of the analysis of the subjective element of the offense.

On a different note, the second modality of identity fraud is the attribution of a false identity to another person, which may be carried out both through the act of using the real identity of another person, and the act of entrusting an official document that serves to establish identity.

The act of "*using*" a person's real identity means that the perpetrator employs authentic information regarding the identity of an existing individual, information that may be found in the State Population Register or in another information system.

The act of "*entrusting*" may be expressed through the direct or indirect handing over of an official document that serves to establish identity.

Furthermore, criminal law distinguishes between the use of a false identity and the use of a pseudonym. The latter may be used as long as it does not infringe upon the identity of another person or the pseudonyms of other data subjects.

Considering the elements outlined in the objective component of the present offense, the crime provided in Article 177[1] of the Criminal Code will not be committed in situations where, for example, a divorced woman presents herself under the surname acquired through marriage, even though the marriage has been dissolved, especially if the court decision dissolving the marriage does not contain any provisions regarding the

spouses' surnames after the divorce.

The *subjective component* of the offense of identity fraud is characterized by direct intent. Additionally, the legislator has provided for the presence of a special purpose pursued by the perpetrator, namely the production of legal consequences.

Regarding legal consequences, according to Constitutional Court Decision (CCD) No.194 of December 21, 2023, "the Court considers that it is neither possible nor reasonable for the Criminal Code to provide an exhaustive list of legal consequences that may arise from the commission of the offense of computer-related forgery. In fact, an exhaustive list of legal consequences could omit the regulation of situations that would reasonably justify criminal liability for computer forgery (see, mutatis mutandis, CCD No.78 of June 16, 2022, § 26; CCD No.179 of December 15, 2022, § 24; CCD No.89 of July 25, 2023, § 24)" [20, para.24].

At the same time, according to the same Decision, paragraph 25 states that the European Court has found that a law may still meet the requirement of foreseeability even if the person concerned must seek appropriate legal advice in order to reasonably assess the consequences that a particular action might entail [20, para.25].

Taking into account the observations made by the Constitutional Court in the aforementioned case, where it was emphasized that there is no exhaustive list of legal consequences that may result from the commission of a criminal offense – in this case, identity fraud – it follows that the existence of such a comprehensive list could omit the regulation of situations that would reasonably justify holding a person criminally liable for committing identity fraud.

The subject of the examined offense is a natural person who, at the time of committing the offense, has reached the age of 16.

Conclusions. The analysis of the offense of illegally presenting oneself under a false identity, or fraudulently assigning a false identity to another person, reveals several legal challenges generated by technological developments and the growing complexity of digital interactions. The use of official documents, online accounts, email addresses, or other services of the information society to deceive or maintain a person in error – with the intent of producing legal consequences – requires clear and effective regulation, adapted to current social and technological realities.

Furthermore, it can be concluded that, when criminalizing this offense, the legislator adopted a vague definition, which creates difficulties for law enforcement and judicial authorities in effectively preventing and combating the phenomenon of identity fraud.

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FROM PARENTAL PROTECTION TO THE CRIME OF MISTREATMENT OF MINORS

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Summary

This article focuses on how a minor child can be put in danger by the very person who raises and educates him. Most of the time, there is a fine line that can be easily crossed between the exercise of parental authority and abusive behavior towards the child, which can ultimately lead to the commission of crimes. This article focuses on how a minor child can be put in danger even by the person who raises and educates him. Most of the time there is a fine line that can be easily crossed between the exercise of parental authority and abusive behavior towards the child, which can ultimately lead to the commission of crimes. The raising of minors is based on the principle of the best interests of the child, which is seriously violated when the parents or those who raise and educate them violate this line. Although the two institutions are part of two different branches of law, respectively public and private law, it is worth to make profund analysis.

Keywords*: *parental authority, minor child, parents, crime, Criminal Code, punishment, circumstantial subject, child's interest, civil law, criminal law.

Introduction. The upbringing, education, physical and moral development of minors, as well as their formation as individuals perceived as social beings are influenced by their parents or those responsible for their care.

The protection of minors is essential to their development in society, and this protection is most often provided by their parents. The Romanian Civil Code refers to this form of protection as parental authority, an institution that is also found in the French and Canadian Civil Codes, as well as in the Family Code of the Republic of Moldova. Parental authority was also mentioned in the old Family Code of Romania, whose articles were largely absorbed into the Romanian Civil Code, but it was found under the name of parental protection, a name that we often find in doctrinal works.

Parental authority is defined in doctrine and in the Civil Code as the totality of the rights and obligations that parents have towards their minor children. These rights may also be exercised by other persons in whose care the minor is placed, such as a foster care institution or a guardian.

Therefore, through parental authority, parents guide minors on their path to maturity and are obliged to provide them with an environment conducive to their physical and intellectual development. Thus, parental authority involves a series of duties for parents, who must ensure the minor's right to education, health, and activities that can develop their artistic and sporting abilities, and so on.

Parental authority is governed, like any institution, by its own principles, but one of the most important principles is that of the "*best interest of the minor*", which states that

parental authority is exercised by parents solely in the interest of the minor and with due respect for the minor.

Although in most cases in contemporary families, parents exercise their parental rights and obligations towards their children in accordance with the law and good morals, in exceptional situations there are exceptions to these rules.

The parent, guardian or person in whose care and protection the minor is may punish the minor when he or she misbehaves for the purpose of educating the minor and imposing limits, but such punishment must not exceed the scope of good morals and the physical and mental integrity of the minor, Physical punishment of any kind or punishment that would have a strong emotional impact on the child is prohibited.

Definition, content and exercise of parental authority. Firstly, Article 483(1) of the Civil Code, found in Title IV, Chapter I, defines parental authority as "the set of rights and duties relating to both the person and the property of the child and belonging equally to both parents". It follows that, in the light of parental authority, the guardian of a minor is obliged to take care of the minor, ensuring everything necessary for a life appropriate to the minor's harmonious development, and is obliged to maintain the minor and ensure his or her access to education and training [5, Art.483, para.(1)].

Parental authority has a broad scope, encompassing a multitude of rights and obligations of parents. However, this scope is divided into two categories:

a) Rights and obligations regarding the child's person;

b) Rights and obligations regarding the child's property [3, p.487-499].

Within the first category, the doctrine lists the following *rights and obligations*:

1. The right and obligation to raise the child;

2. The right and obligation to care for the minor's mental and physical health;

3. The right and obligation to provide for the child's education, schooling and vocational training;

4. The right and obligation to supervise the child;

5. The right to demand the return of the child from any person who has him or her without right;

6. The right to consent to the child's engagement, marriage or adoption;

7. The right to determine the child's place of residence;

8. The right to supervise the child's education, upbringing and care;

9. The right to have personal relations with the child.

The second category includes *rights and obligations of a patrimonial nature*:

1. The right and obligation to take care of the minor's patrimony;

2. The right and duty to represent the minor in civil acts and to consent to such acts.

Secondly, in order to understand the mechanism of this institution, which is extremely important in law, it is necessary to analyse and explain how parental authority is exercised. Therefore, parental authority is exercised as a rule by both parents together in equal measure, so that when one parent acts alone in exercising parental authority towards third parties acting in good faith, it is presumed that he or she has acted with the consent of the other parent [3, p.499].

Joint parental authority arises:

– Upon the birth of the child for married parents;

– Upon recognition of the child by the unmarried father;

– By judicial means when the mother requests recognition of paternity.

The general rule also has a number of exceptions regulated by the Civil Code. These exceptions are as follows:

1. Exercise of parental authority by one parent;
2. Unequal exercise of parental authority by parents;
3. Partial exercise of parental authority;
4. Exercise of parental authority by a guardian/curator/specialised institution [5, Arts.503-507].

Offences committed as a result of the abusive exercise of parental authority contrary to the best interests of the child. As mentioned above, in the exercise of parental care, the parent/guardian/carer entrusted with this power has a number of rights and obligations with regard to the person and property of the minor. However, there is a fine line between exercising these rights and committing abuse against the minor. As a result of the fact that parents receive these powers over their minor children by operation of law, many of them, unaware of what parental care entails from a legal point of view, they commit certain abuses or serious neglect towards their child, sometimes without knowing it, considering that this is the best way to raise their child, using physical punishment or depriving the child of food, punishments that are clearly unacceptable from both a moral and legal point of view. On the other hand, there are much more serious situations in which parents intentionally physically or psychologically abuse their minor children, situations in which they intentionally deprive the child of what is necessary for their growth or education, or subject them to inhumane treatment, which is extremely worrying.

Firstly, a distinction must be made between criminal and civil penalties that can be imposed on parents in such situations.

A first penalty is provided for in Article 508 of the Civil Code, but also in Law No.272/2004, Articles 41-43, when the parent is deprived of parental authority.

Disqualification is a sanction specific to civil law and involves the loss of a right, more specifically, in the present case, the loss of the right to exercise rights and obligations in relation to the minor child. The deprivation of parental rights occurs when the parent endangers the life, health or development of the minor child by subjecting them to ill-treatment, alcohol or drug abuse, abusive behaviour, serious neglect in the exercise of parental rights or violation of the best interests of the minor. We conclude that this sanction applies only when parents commit acts of a certain seriousness, such as those that fall within the categories listed above.

Secondly, deprivation must not be confused with criminal sanctions, such as imprisonment or criminal fines, which occur when the parent commits criminal acts. The Criminal Code regulates a number of offences precisely in order to protect the development of minors and to prevent parental authority from being invoked as an excuse for committing certain offences against the health or life of minors, or their physical and mental integrity, as parents cannot have supreme control over the body or mind of a minor child or over their property [4, p.224].

Thus, parental authority cannot be used as a mask that allows parents to exercise complete control over their children, who are not the property of a parent but social beings who are extremely vulnerable from all points of view.

One of the most important offences under the Criminal Code is that set out in Article 197, which regulates the offence of ill-treatment of minors. This is defined as an of-

fence that seriously endangers, through measures or treatment of any kind, the physical, intellectual or moral development of a minor by their parents or any person responsible for their care. The punishment provided by law for this offence is imprisonment and the deprivation of certain rights [6, Art.197].

The acts that constitute the material element of this offence are much more serious than those for which civil law provides for the deprivation of parental rights. Since these acts are extremely serious and the passive subject of the offence is a minor, an extremely vulnerable person as mentioned above, whom the law, regardless of its scope, always seeks to protect adequately, criminal proceedings are initiated ex officio and not upon the prior complaint of the victim. This method of initiating criminal proceedings was chosen because the victim may be influenced by the perpetrator and thus fraudulently prevented from reporting the offence to the competent criminal authorities. Criminal law classifies this offence as an offence against bodily integrity or health.

Analysis of the constitutive elements of the offence of ill-treatment of minors - Article 197 CC. The first element to be analysed is the object of the offence. This is subdivided into two categories: the legal object and the material object:

The legal object: this is also subdivided into the main legal object (the offence protects social relations relating to the physical and mental integrity of minors) and the secondary legal object (social relations relating to the upbringing and education of minors, family relations and social coexistence)

Material object: consists of the minor's body when the offence is directed at them.

The second element consists of the subjects of the offence. There are two types of subjects: the active subject – the person who commits the offence; and the passive subject – the person against whom the offence is directed.

The active subject is circumstantial, is the law requires that they have a certain quality. They may be the perpetrator: the parent, regardless of whether they are the natural parent, adoptive parent or parent outside marriage, guardian, curator, another relative, even a nanny and any person in whose care the minor is.(For example, if parental authority is exercised by a placement institution, the perpetrator may be the person in whose care the minor has been placed).

Criminal participation is possible in all forms (co-perpetration, complicity, incitement).

For example, a relative insists and convinces one of the parents to leave the child hungry for several days in order to punish him for refusing to be polite, and the latter does exactly what he is instigated to do.

In a situation where the perpetrator does not have one of the qualities listed above, they do not commit the offence of ill-treatment of a minor but another offence against bodily integrity, for example (a neighbour who was close to the minor's family sees that the minor has broken a window with a ball and repeatedly beats him with a wooden bat, causing injuries to his legs, has committed the offence of assault or other violence)

The passive subject is also circumstantial. This is the minor, regardless of age or state of health, however, a minor who has reached the age of 16 and has acquired full legal capacity cannot be the active subject of this offence. This refers to minors who have been emancipated by a court decision or who have attained full legal capacity through marriage. This opinion is also found in criminal doctrine, an opinion which we also share. Given that the minor has full legal capacity, he or she is no longer under parental author-

ity and is no longer considered vulnerable, and therefore no longer qualifies as a passive subject [1, p.77].

Moving on to the analysis of the elements of the offence, we will now discuss the objective aspect of the offence, more specifically the material element. This represents the action or omission by which the offence is committed. The material element consists of seriously endangering the physical or mental development of the minor through measures or treatment of any kind, which can be achieved either through action or inaction: depriving the minor of liberty, physically abusing the minor, refusing to provide the minor with necessary medication when in poor health, refusing to give the minor food, using the minor for hard labour that may cause physical harm, and other similar acts. The essence of this offence is that the ill-treatment must be continuous, the actions or omissions must be repeated, a single act not constituting the material element of the offence.

In legal theory, the question has been raised as to whether the offence can be considered in conjunction with murder. The issue arose from the HCCJ Decision 1646/05.05.2009, which stated that the two can be considered in conjunction. Legal theory is divided on this issue. The first opinion is that the two offences cannot be considered in ideal concurrence because the repeated beating of the child, which ultimately leads to his death, means that the offence of ill-treatment is naturally absorbed into the offence of murder [2, p.87-89]. A second opinion is that the offence of ill-treatment can be considered in ideal concurrence with the offence of murder, or other offences such as unlawful deprivation of liberty, attempted murder, assault or other violence, sexual corruption or incest [1, p.77].

As a personal opinion, we tend to agree with the first doctrinal opinion, which also differs from that of the High Court, and consider that the crime of murder will naturally absorb that of ill-treatment. We justify this opinion by the fact that the active subject's intention is to take the victim's life, not to subject the minor to constant ill-treatment, which must be evident from the causal link between the act and the immediate consequence. We have natural absorption, for example, when a parent repeatedly hits a one-year-old minor at short intervals in critical areas such as the head and abdomen, causing his death, or when a parent intentionally deprives a child suffering from an incurable disease of the treatment that was absolutely necessary to keep him alive.

Last but not least, the immediate consequence of the offence must be analysed. This causes a state of danger to the physical and mental development of the minor, being a crime of concrete danger, and the moment when the offence is completed coincides with the moment when the measures or treatments that seriously endanger the minor cease [1, p.78].

The form of guilt is also of particular importance: the offence is committed with direct or indirect intent, and if the active subject is a person other than a parent or relative, special circumstances should not be analysed. Conversely, if the perpetrator is the parent or guardian, circumstances such as education, social environment, family environment, age, standard of living, etc. must be taken into account.

Unlike the civil penalty of forfeiture of parental rights in cases of ill-treatment, in criminal law, ill-treatment of minors is punishable by imprisonment and the additional penalty of deprivation of certain rights, such as: prohibition of the exercise of parental rights, the right to be a guardian or curator, or prohibition of the right to hold the position, profession or activity that was used when the offence was committed [2, p.90].

This is an extremely important ECHR ruling that has influenced Romanian legislation on the loss of parental rights. In this ruling, the Court established that the automatic deprivation of parental rights is a measure that is too severe and violates the best interests of the child. This had a major impact on Romanian legislation, as the Criminal Code was amended on the basis of this ruling, with many automatic penalties being removed from the new Criminal Code (2014) or made subject to specific requirements [8].

In our view, the ECHR acted correctly because the offence committed by journalist Sabou was one of defamation and not one that concerned a minor child or a family member, nor did it have any connection with his parental duties. Furthermore, the commission of such an offence did not in any way affect the way in which he exercised his parental rights, so such a sanction is unjustified, and the additional penalty of automatic deprivation of parental rights was neither proportionate nor tailored to the particular situation of the defendant.

Conclusions. In conclusion, as stated above, there is a fine line between the abusive exercise of parental authority and the commission of an offence that may harm the best interests of the minor. As shown above, the offence of ill-treatment of a minor has an active subject, but also a passive subject, which is the essence of this offence. The passive subject is most often the parent who exceeds the legal limits of parental authority, putting the minor's development in serious danger.

This article provides a thorough and detailed analysis of the two institutions that are part of different branches of law, and also presents the correlation between the two and what this connection implies.

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THE CRIMINAL CHARACTERISTICS OF THE TERRORIST ACT: THE NOTION AND ELEMENTS

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Summary

Terrorism, in all its forms and manifestations, by its scale and intensity, by its methods of manifestation and cruelty, represents one of the most topical and sharp issues of humanity. The diversity of terrorist manifestations and their social dangerousness make terrorism stand out among all types of crimes, being one of the most acute problems of contemporaneity. The current stage of development of society is characterized by significant changes in the political, economic and social fields, which have led to a considerable increase in crimes of a terrorist nature.

The development of a methodology for investigating terrorism is one of the current objectives of forensics. It is obvious that the notion of terrorism requires a concretization, which will be achieved as different elements of the criminal characteristics of terrorism are exposed and analyzed. However, the objective necessity of the scientific elaboration of the investigation methodology and the criminal characteristics of terrorism, their theoretical and practical significance, as well as the insufficient analysis of the issues addressed in forensics determined the choice of the theme of this research.

Keywords: criminal characteristics, terrorist act, object of the crime, method of commission, purpose, circumstances, place, time, traces, perpetrator, victim, consequences, harmful consequences, material damage.

Introduction. At present, there is no unanimously accepted definition of concept of 'terrorism' at the international level [10, p.278]. The author E.N. Zhevlakov argues that terrorist activity includes: 1) organization, planning, preparation and implementation of a terrorist action; 2) incitement to a terrorist act, violence against individuals and organizations, destruction of material property for terrorist purposes; 3) organization of an illegal armed formation, a criminal group (criminal organization) for the commission of terrorist acts, as well as participation in such an action; recruitment, arming, training and use of terrorists; financing of a terrorist organization or a terrorist group or other form of support provided to them [18, p.40-45].

I.I. Karpets defined terrorism as "an international, intrastate activity organized in a specific way, aimed at creating special organizations and groups for the commission of murders, causing bodily harm, the application of violence and kidnapping of persons as hostages, the forced deprivation of freedom of persons, the humiliation of personality, the application of torture, the acts of sadism, etc." [20, p.98-99].

In this regard, we fully agree with the author I.I. Avdeev, who defines terrorism as a socio-political phenomenon, stating that terrorism, throughout the entire history of its existence, is characterized by a stable complex of features (particularities), which distinguish it from other forms of violence and ensure to it a certain species autonomy in this

system. These fundamental features of terrorism, total violence and terror are: socio-political orientation, the illegal nature of the application of violence; the conspiratorial nature of the actions of its subjects, necessary to ensure the establishment and existence of terrorist structures and their participants, as well as the preparation and implementation of specific terrorist actions [12, p.61-65].

Based on the analysis of terrorist activity in different countries of the world, a number of features characterizing terrorism can be highlighted, namely: 1) Terrorism is used as a form of struggle for power; 2) Not only nationalist terrorist groups, but also those with ideological goals, are gaining the widest possible distribution; 3) Modern terrorists are better organized, technically equipped and more professional than they were some time ago; 4) Terrorism poses a major threat to the security of civil rights, the stability of the state system, economy and even democracy; 5) Governments of countries and the world community have not assessed the threats of terrorism in a timely manner, have not developed a coherent strategy to combat this phenomenon, especially in terms of its prevention; 6) According to experts, terrorism will pose an even greater threat in the coming period [15, p.75].

In addition, the common features of terrorism include: 1) the demonstrative and ultimate nature of actions and demands; 2) causing physical harm (murder, bodily harm) or applying psychological violence to an indefinite circle of people; 3) causing material damage is not an end in itself, but is only a means of influencing people or authorities (the state) [23, p.15].

Knowledge of the illicit activity carried out by the perpetrator is decisive for establishing the specific and possible (virtual) consequences of the criminal manifestation, who the possible victims are and, last but not least, what were the causes, conditions and circumstances that facilitated the commission of the act [2, p.259]. Highlighting the common features and particular characteristics of the terrorist act allows us examining this phenomenon as a crime. In this context, there is a need to develop criminal characteristics of the acts of terrorism.

Methods and materials applied. The general methodological basis of the research is dialectics as a general scientific method of knowledge of phenomena and processes in their interdependence and interconditioning, as well as systemic and structural methods of knowledge, which allowed the analysis of the formation, establishment and current state of the activity of law enforcement agencies in the field of combating terrorism. In the research process, the formal-logical method was applied, which allowed identifying and analyzing the elements that constitute the notion and essence of the criminal characteristics and the mechanism of the investigated crime. The application of these methods and techniques of knowledge allowed a complex analysis of the problem of the criminal characteristics of terrorism (terrorist act), the systematization of the information obtained and the formulation and justification, on this basis, of certain conclusions and recommendations.

Discussions and results obtained. Currently, the existence of the criminal characteristics of a certain crime and its elements is the subject of several scientific debates. However, at the current stage of development of forensics as a science, the criminal characteristics must exist and represent the main, basic element of the description of a crime from the perspective of forensics. At the same time, multiple aspects related to the structure (elements) of the criminal characteristics of the crime remain under discus-

sion. Some authors expand the criminal characteristics and introduce such an element as typical initial information into its structure [13, p.688; 16, p.25-26]. Other researchers, on the contrary, significantly narrow this concept, limiting it to the circle of circumstances that must be established in the process of investigating criminal cases [26, p.242-243]. In the opinion of S. Doraș, the criminal characteristics of the crime highlight and describe certain data with particular significance [4, p.520]. The author M. Gheorghiță states the following: "the criminal characteristics is a dynamic notion, which presents a description of the traces, attributes, signs of the specific crime, of those elements that outline the phenomenon or some evidence, indications of the crime taken separately at a certain stage" [6, p.732].

Without delving into the analysis of the positions of researchers with respect to the structure of the criminal characteristics, since this topic is not part of the subject of the research in question, the best substantiated is the concept and the structure of the criminal characteristics proposed by A.G. Filippov. In his opinion, the criminal characteristics should be defined as "a system of features characteristic of a certain type of crime, which are of major importance for its investigation and which determine the application of forensic methods, techniques and means". This author identifies five main elements of the criminal characteristics: 1) The immediate object of the crime; 2) The manner of committing and concealing the crime; 3) The circumstances in which the crime was prepared and committed (time, place, etc.); 4) The mechanism of trace formation; 5) The person of the offender and the victim [26, p.242-243].

Obviously, knowledge of all the components of the criminal characteristics of terrorism, interconnected with each other, as I.I. Artamonov mentions, will allow building a more or less complete model of the crime based on fragmentary information and separate components, will allow formulating justified hypotheses regarding the preparation, commission and concealment of this crime [14, p.36].

Regardless of the particularities of each specific act of terrorism, the investigation undertaken involves establishing categories of problems to be clarified, the answer to which is absolutely necessary to clarify the respective case and without which there is no possibility of the judicial body realizing the circumstance of whether or not the constitutive elements of such a crime are outlined [2, p.301].

Making the criminal characteristics of terrorism, it should be noted *that the object of the criminal attack* is public safety (terrorists aim to cause harm to the security of society and the state, terrorist actions target the peace and security of humanity, the political and economic system, the foundations of the constitutional order and the normal functioning of state authorities).

In the opinion of authors S. Brînză and V. Stati, "the main legal object of the crime of terrorism is the social relations regarding public security defended against the provocation of an explosion, a fire or the commission of another act that creates the danger of causing death or injury to bodily integrity or health, essential damage to property or the environment or other serious consequences. In turn, the secondary legal object is formed by social relations regarding one of the following social values: life, health or psychological (moral) freedom of the person; the integrity, substance or possibility of use of goods; the integrity of the environment; the normal functioning of public authorities" [1, p.524].

The main efforts of terrorists are directed towards causing the greatest possible damage, being interested in the scale and public resonance of the terrorist act, because

only in this way will their goal be achieved. Thus, if the action is planned in order to take hostages, for the release of which certain political and economic requirements must be met, terrorists choose in advance the place where the terrorist act will be committed and can anticipate, in general terms, what the consequences will be, who could be taken hostage and, subsequently, deprived of life.

When terrorist attacks are committed by perpetrators acting on their own, usually the intended goal is the destruction of as many people as possible, which should cause terror among the population and determine government and political figures to take certain measures to urgently resolve some situations in a way that is beneficial to the terrorists.

In this context, *the object of the criminal attack* in the case of terrorism can be any object of the material world [17, p.17-18].

The ways (modalities of committing) of the terrorism crime can be among the most varied and directly depend on its form. In the case of terrorism leading to the emergence of dangerous consequences for society, the following methods of commission are characteristic: 1) Explosions committed by terrorists acting on their own, using vehicles loaded with explosives or 'kamikaze' terrorists who destroy everything around, including themselves; 2) Intentionally caused arson; 3) Causing accidents at critical infrastructure facilities, social services; 4) Causing accidents and catastrophes in air and rail transport; 5) Mining of buildings, institutions, roads, public transport stations; 6) Contamination and poisoning (contamination of land with various radioactive, chemical, biological, toxic, poisonous substances, mass poisoning and the spread of epidemics).

In addition, some specific crimes committed by criminals for terrorist purposes may also be included as methods of committing terrorism: 1) Taking hostages, in order to force state authorities to fulfill certain political, economic, etc. requirements; 2) Hijacking, capturing a means of transport (air, naval, rail, road) with the mandatory presence of people inside, whose lives are endangered; 3) Hijacking, capturing means of transport, without the presence of people inside, in order to cause dangerous damage to society (for example, the destruction of a factory that will lead to land contamination); 4) Capturing buildings, premises in order to destroy them and cause the death of people; 5) Creating armed formations intended to capture territories, institutions, enterprises, buildings (along with people), in order to impose certain conditions; 6) Public calls for violent overthrow or change of the constitutional order, as well as calls for acts of treason, violation of national or racial equality, accompanied by violence [17, p.19-20].

In the opinion of the author M. Gheorghiță, the ways of committing the crime of terrorism can be divided into: 1) Ways based on actions that generate by their essence the danger of death of people or harm to their bodily integrity, the danger of causing significant material damage or the occurrence of other serious consequences; 2) Ways of action that create conditions for the emergence of the danger of death of people (accidents at objects of providing the population with the necessities of life, etc.) [5, p.414].

Terrorists widely use the achievements of modern engineering and technology, equipment and information technologies. In addition, scientific and technical progress continuously expands the arsenal of methods for committing terrorist acts [24, p.40].

The author A.V. Fedorov, speaking about the ways of committing the crime of terrorism, emphasizes that terrorist acts can be committed in the form of explosion, arson, use or threat of use of nuclear, radioactive, chemical, biological, explosive, toxic, poison-

ous explosive devices, hazardous substances; attacks on the lives of government or public figures, representatives of national, ethnic, religious or other groups of the population; capture (taking) of hostages, kidnapping of persons; creation of a danger to the life, health or property of an indefinite circle of persons by creating conditions for accidents and catastrophes of a technological nature or the real threat of creating such a danger; spreading threats in any form and by any means; other actions that create a danger of death of persons or the occurrence of other dangerous consequences for society [25, p.22].

In the case of the threat of terrorism, the method of committing the crime is a system of interconnected actions of the offender to transmit information about the terrorist act to be committed. Here, two methods of communication can be distinguished: direct and indirect.

The direct method of transmitting information about terrorism consists in the verbal communication of data by one person to another - contact between the offender and the person to whom the information is addressed. Among the indirect methods of transmitting information are written messages, transmitted by telephone, through the media, through third parties, as well as through other means of communication.

The most significant acts, which determine the predominance of the methods of committing terrorism in the form of a threat by transmitting it through the media and the Internet, are the following: first of all, the desire of criminals to 'bring' the threat to a wide audience, creating an atmosphere of panic and fear; secondly, attracting the attention not only of the state's law enforcement agencies, but also of the whole world, in order to demonstrate to the entire international community the capabilities of terrorist organizations; thirdly, the desire to hide the involvement of persons who directly participate in the commission of crimes (usually, responsibility for these crimes is assumed by terrorist organizations, either through their leaders), without indicating their identity [17, p.21-22].

In addition, among the methods of committing a crime is violence against the person: physical, patrimonial (material) and moral (psychological). Methods of physical violence are designed to change (or keep unchanged) policy by physically removing a person or group of people from their public or government activity. In practice, this can be manifested by the deprivation of life of this person (or group of persons), by causing bodily harm, by deprivation of liberty or by significantly limiting it.

Methods of moral and psychological violence against a person have the same political goals as physical violence, but they are carried out not by attacks on the life and health of a specific person (civilians), but on the property of the state, society or private individuals. Illegal action in relation to property is intended to deprive a certain political actor or organization of the material basis necessary for the implementation of the chosen political line. Moral and political violence is manifested by blackmail, threats, slander and similar actions, aimed at harassing, unbalancing and psychologically undermining a person [21, p.87].

Concluding on the ways of committing this crime, we find it necessary to agree with some researchers who state that: "... not only the content of terrorist actions is important, but also their character. These actions must necessarily have a public character. For the offender, it is essential that it be obvious that an act of terrorism has been committed, that what happened is not an accident, a coincidence or some other crime" [19, p.43].

As *instruments (means)* of the crime, criminals most frequently use explosive objects. However, in the practice of investigation, cases of the use of various poisonous

substances, contaminants and radioactive materials are encountered [22, p.75]. In the opinion of M. Gheorghiță, terrorist actions are possible with the application of means that can be divided into two large categories: weapons, explosive substances and devices, as well as other objects [5, p.421].

Terrorist motivation is "a psychological process initiated by a certain religious, political, territorial, intellectual, ethnic and cultural need that leads to the performance of an activity with the role of satisfying this need, constituting a psychological force that energizes and directs deviant behavior" [3, p.53].

The goals of the act of terrorism. The goals of terrorism can be assessed as global or local [5, p. 424]. Analyzing the acts of committing terrorism, criminals take measures to hide their involvement in the crime, but do not try to hide the crime itself. Moreover, they take measures so that the terrorist act or the threat of terrorism acquires a wide public scope, considering that only in this case the goal of terrorism – creating a state of fear and panic among citizens – will be achieved.

In the case of committing terrorism in the form of a threat, the main ways of concealing involvement will include: the use of means of transmitting the message, through which the location of the offender cannot be determined (satellite communications, websites), changing the voice during the conversation, reproducing an audio recording, composing a written text from letters and words cut from printed publications, writing the text in printed letters or with a change in handwriting, as well as the use of modern printing equipment, sending information materials by mail from different locations [17, p.25-26].

Analyzing *the circumstances of the commission of the crime*, it can be emphasized that there are several reasons why terrorism acquires a 'mass' character and is a problem not only for a single state, but also for the entire international community. Supporting the opinion of the authors S.P. Kuzminykh and V.M. Grishchenko, we note that these reasons are the following: 1) Deep contradictions in the economic sphere, caused by social difficulties in the transition process, as well as the subjective perception of a part of the population regarding new economic relations or methods of transition to them; 2) Increasing social differentiation among citizens; 3) Low efficiency of the activity of law enforcement agencies, the lack of an effective mechanism for protecting the population; 4) Fierce power struggles between political parties or social organizations pursuing political goals, as well as between separate groups whose leaders have selfish goals; 5) Decreased efficiency of protection mechanisms in the sphere of morality and ethics, loss of orientation in educational activity, especially among youth; 6) Increased tendency to resolve contradictions and conflicts that have arisen by violent methods; 7) Intensification of social contradictions under the influence of increasing crime; 8) Lack of reliable operational sources for law enforcement officers; 9) Lack of clear interaction between criminal prosecution bodies and operational and investigative units and vice versa; 10) Insufficient level of technical endowment of law enforcement structures and subdivisions that directly fight terrorism [21, p.85].

The time and place of committing the crime are determined by the criminals depending on the goals set, the manner of committing the crime, as well as the specific circumstances of the case [5, p.417].

The place of committing a terrorist act is usually chosen by terrorists from the point of view of their safety, with the exception of terrorists who act alone, in order to be able

to impose their own conditions. However, in the event of a failure of the committed actions, the goal is to cause as much as possible harm and damage. In this sense, the place of committing a terrorist act that leads to dangerous consequences for society can be any location where a large number of people gather (public institutions, religious institutions, companies, public demonstrations, etc.).

Terrorists choose the moment (time) for committing terrorist acts with great care, meticulously, considering the location where the crime will materialize. The main criterion in choosing the moment of committing a crime is to 'obtain' the largest possible number of victims and cause the greatest possible material damage. Terrorist threats are usually made during the day, but depending on the way the message is transmitted, they can be transmitted at any time of the day or night [17, p.28-30].

Analyzing the features of the mechanism of trace formation, it is necessary to examine them in the context of the way terrorism was committed, whether it led to dangerous consequences for society or not.

Traces of a terrorist act. It should be borne in mind that no object can disappear without leaving traces. Traces remain at the place where it was. Fragments of the destroyed object also remain [5, p.422]. Material traces of terrorism that have led to consequences dangerous to society can be discovered: at the place of preparation for committing the crime (the offender's home, the vehicle in which he transported highly dangerous objects), at the place of committing the crime.

In the case of committing terrorism in the form of a threat, material traces can also be discovered in the following locations: at the place of preparation for committing the crime, at the place where the means (instruments) intended for committing the crime are located, as well as possibly at the place of committing the crime (at the place from which the message was transmitted). However, as for the latter case, the specialized literature mentions that in investigative practice there is no known case in which such a place was discovered. This fact can be explained by the confidentiality measures taken by terrorists to hide their location. Thus, the place of commission of the crime exists only formally (from a theoretical point of view), and identification and removal of traces of the offender from the place of commission of the crime are usually not possible.

At the place of preparation for terrorism, traces of the hands, feet of the offenders, traces left by vehicles, mechanisms and parts of explosive objects, toxic, explosive and other substances, tools and objects used by the offender for the manufacture and modification of objects of increased danger, particles of explosive, toxic and other substances, objects or parts thereof used for their camouflage can be discovered [17, p.30-31].

If, when committing a terrorist act, the criminals used firearms, it is possible to discover various types of firearms and ammunition for them, cartridges, bullets, as well as traces of the use of firearms on various objects (buildings, killed persons), traces of the presence of criminals (clothing, equipment, food products, etc.), traces of transport, hands, feet, etc. At the place of the threat of committing a terrorist act and on the surrounding objects, traces (biological, traceological) of the criminals can be found. Moreover, at the scene of the crime, traces of the vehicle, tools and objects used by the criminal to install dangerous objects, traces of camouflage materials or parts thereof, etc. Additionally, significant forensic information can be provided by the object of increased danger itself or by the one imitating its structure, details, materials, the presence of changes in its construction, etc.

Besides, when committing terrorist acts, ideal traces remain which can play a crucial role in the investigation. These traces include: information about the criminals available to the law enforcement agencies, data about the criminals that victims and witnesses saw and observed directly both during the preparation and during the commission of terrorist acts [17, p.33], moments that are described in great detail in the specialized literature [7, p.28-244; 8, p.102-150; 9, p.404-606; 11, p.260-517].

On top of the aspects discussed above, an important feature is the analysis of *the person of the criminal*. The commission of crimes in this category occurs, in most cases, by a group of people. This group is created to commit a specific terrorist act or a series of acts and is characterized by organization, cohesion and conspiratorial nature. The members of the criminal group consciously participate with their material, intellectual, functional, organizational and executive resources in the implementation of a common plan to commit terrorist acts.

However, this group represents only a structural unit of a much larger criminal organization – the terrorist organization. From a forensic point of view, a terrorist organization is understood as a set of organized criminal terrorist groups that act in a coordinated manner in a certain field or on a certain territory, committing acts of terrorism, directly or indirectly, contributing to the implementation of these acts (or parts, stages within them), either disinterestedly, or for a certain material reward or for other reasons.

The characteristic features of these structures are the long duration of existence, the constant commission of terrorist acts, effective protection against detection, especially due to political and corrupt connections, and a strict hierarchical system of relations between their members, based on the principle of mutual solidarity between the members of the organization [17, p.34-35].

Data about the person of the victim. Identifying the victim and establishing his/her status is of particular importance for the forensic investigation, since once his/her identity is established, it is possible to determine the circle of suspects and in the legal framework of the act depending on the status of the passive subject of the crime [2, p.329]. Depending on the presence and nature of the mutual relations between criminals and victims, the latter should be classified into two large categories: victims whose personality is of direct interest to criminals, and victims who have occasionally found themselves in the field of view of the terrorist act [5, p.418]. So, speaking about the person of the victim, we note that it can be anyone, regardless of status or social position: political, religious and state figures, representatives of state and commercial enterprises, military, workers, officials, ordinary citizens, students, children, etc. Regardless of who is targeted by the terrorist act, the victims will always be innocent citizens – all those who happened to be in the place where the terrorist attack took place [17, p.37].

Conclusions. Currently, terrorism should be considered a large-scale phenomenon, which poses a threat to the fundamental interests of the individual, society and the state. Even a superficial analysis of it allows concluding that terrorism is acquiring an increasingly pronounced political character. This is due, first of all, to the fact that terrorism undermines the system of state power and administration, thereby reducing the efficiency of governing society and regulating socio-political processes; secondly, by weakening governmental and social structures, it strengthens the influence of opposing and anti-constitutional groups in the society; thirdly, by intensifying the moral and psychological impact on the population, it causes chaos, unrest and hostility between people; and,

fourthly, by going beyond national borders, terrorism acquires an international dimension and poses a danger to the international community.

Thus, the establishment of all elements of the criminal characteristics of terrorism provides the opportunity to take measures to prevent and combat the commission of terrorist acts from the preparatory stage. Moreover, based on the criminal characteristics of terrorist crimes, it allows identifying typical criminal prosecution situations, formulate the most substantiated versions and coordinate the activities of criminal prosecution bodies in the first phase of the investigation.

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CURRENT TRENDS IN IMPROVEMENT OF REGULATIONS REGARDING THE INSTITUTION OF CONDITIONAL RELEASE BEFORE THE TERM

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Summary

The topic addressed in this article analyzes the recent amendments to Article 91 of the Criminal Code of the Republic of Moldova, which regulates conditional release from criminal punishment before the term. The study assesses the impact of these changes on the criminal justice system, identifies practical challenges and examines the compliance of the new provisions with international human rights standards.

The amendments to Article 91 of the Criminal Code of the Republic of Moldova by Law No.136 of 06.06.2014, in force from 07.09.2024, have the potential to improve the clarity and efficiency of the judicial system, to protect the rights of persons accused of crimes and to contribute to a fairer justice. These amendments will also contribute to ensuring a fairer, more transparent and more efficient criminal process within the national judicial system, in strict accordance with international human rights standards, ensuring their respect in the process of conditional release and throughout the criminal system. Abusive violation of the fundamental rights of convicts will not be tolerated under any circumstances.

Keywords: Criminal Code, parole, unpaid work, criminal justice, court, human rights, international standards.

Introduction. The amendments to Article 91 of the Criminal Code of the Republic of Moldova by Law No.136/2024 aimed to improve and clarify criminal legislation, especially regarding the institution of conditional release. These changes were part of a broader effort to reform the Criminal Code and the Code of Contraventions, initiated in 2022 and completed in 2024.

The draft amendment was developed by a working group consisting of prosecutors, judges, lawyers and experts, with the objective of eliminating legislative deficiencies and ensuring uniform application of criminal norms. It was promoted by the Government in 2023 and adopted by Parliament in 2024, after public consultations and the integration of several amendments.

Law No.136 of June 6, 2024, in force since September 7, 2024, brought significant amendments to Article 91 of the Criminal Code of the Republic of Moldova, which regulates conditional release from punishment before the term [1]. According to the new provisions, the court, when applying conditional release, is obliged to impose on the convict the fulfillment of one or more specific obligations.

According to point 19 of Law No.136 amending certain normative acts (amending the Criminal Code and the Minor Offences Code), the following is specified: Article 91 para.(2) shall have the next content: "By applying conditional release from punishment before the term, the court shall oblige the convicted person to fulfill one or more of the obligations

provided for in Art.90 para.(6) within the term of punishment that has not been served". In the case of unpaid community service, the consent of the convicted person is not required; in paragraph (5), the figures "30" shall be replaced by the figures "25"; in paragraph (8) letter a), the word "premeditation" shall be replaced by the word "intention" [2, point 19].

These changes reflect a more nuanced and individualized approach to the process of social reintegration of convicts, ensuring that conditional release is not just an automatic benefit, but is accompanied by concrete responsibilities tailored to each individual's situation.

Implementing these obligations can contribute to reducing recidivism by providing the convicted person with a clear framework of conduct and support in the reintegration process. However, the success of this measure depends on how the courts will identify and impose appropriate obligations and on the capacity of the system to monitor and support their compliance.

Methods and materials applied. In order to carry out this study within the limits of a scientific article, the following methods were used: documentary analysis, comparative analysis, legal analysis and statistical analysis. At the same time, the research undertaken is based on the study of the existing doctrine, legislation and judicial practice in the given field.

When conducting the study, the criminal law of the Republic of Moldova, as well as national and international specialized literature, served as a reference point.

Discussions and results obtained. The emergence of the institution of release from criminal punishment in general and early release from punishment in particular in the mid-20th century had a positive effect on the regulation of criminal law relations, as it made it possible to apply a milder repressive measure for some minor crimes or even to exempt from criminal punishment by establishing a probationary period. Of course, the institution of release from criminal punishment was supplemented over the decades with new methods that better reflected the state's attitude towards those who committed crimes with a lower danger to society. From the above, it can be concluded that the institution of release from criminal punishment was perfected in the last decades of the 20th century and in the first years of the 21st century [3, p.7].

Regarding the recent amendment to paragraph (2) of Article 91 of the Criminal Code of the Republic of Moldova, namely the introduction of the phrase: "In the case of unpaid community service, the consent of the convict is not required", the legislator sought to clarify and streamline the application of early conditional release. Previously, there was ambiguity regarding the need for the convict's consent to impose unpaid community service as an additional obligation within the framework of conditional release. This ambiguity could lead to different interpretations and difficulties in the uniform implementation of the measure. By eliminating the requirement of the convict's consent, the legislator pursued:

1. Ensuring uniformity in the application of the law: clarifying legislative provisions reduces the risk of divergent interpretations and ensures consistent application of the conditional release measure.

2. Making the convict responsible: imposing unpaid community service without the need for consent emphasizes the mandatory nature of this measure, emphasizing the convict's responsibility towards society.

3. Facilitating social reintegration: unpaid community service provides the convict with the opportunity to contribute positively to society, supporting the reintegration process and reducing the risk of recidivism.

It is important to note that in accordance with the legislation in force, unpaid community service is performed in conditions that do not affect the dignity or health of the convict. Also, the duration and conditions of performing this work are regulated to ensure respect for the fundamental rights of the person.

In the part related to the amendment of paragraph (5) of Article 91 of the Criminal Code of the Republic of Moldova, the numbers "30" being substituted with numbers "25", its content is as follows: "A person serving a life sentence may be conditionally released from the sentence ahead of time if the court considers that there is no longer a need for further execution of the sentence and if this person has effectively served at least 25 years of imprisonment, without taking into account privileged compensation for working days".

This legislative amendment reflects the reduction of the minimum period of life imprisonment required to be eligible for parole, from 30 to 25 years. This is intended to provide prisoners sentenced to life imprisonment with the opportunity to apply for parole after a shorter period of time, thus encouraging rehabilitation and social reintegration. However, the granting of parole remains at the discretion of the court, which will assess the behavior and rehabilitation of the convict. It is important to note that this amendment does not guarantee the automatic release of prisoners after 25 years, but only offers them the possibility to apply for this benefit, subject to the fulfillment of the legal criteria and a favorable assessment by the competent authorities.

The amendment to paragraph (8) letter a) of Article 91 of the Criminal Code, namely, the word "premeditation" being substituted with the word "intention", was necessary to bring legal clarity, correct the use of legal terminology, but also to contribute to an extended applicability in the context of conditional release from punishment before the term.

In criminal law, "intention" is the form of guilt in which the person realizes the harmful nature of his action or inaction, foresees its consequences and desires them or accepts the possibility of their occurrence. On the other hand, "premeditation" involves prior planning of the crime, assuming a time interval between the decision-making and the execution of the act, during which the perpetrator concentrates his mental forces and undertakes preparatory acts to ensure the success of his action. In the context of Article 91 paragraph (8) letter a) concerning situations in which the convicted person evades the fulfillment of the obligations established by the court upon the application of conditional release from punishment before the term, the use of the term "premeditation" was not appropriate. This is because evasion from fulfilling obligations can be achieved both with spontaneous intention and with premeditation. Therefore, replacing the term "premeditation" with "intention" ensures a broader coverage of situations in which the convicted person consciously fails to comply with his obligations imposed by the court, regardless of whether there was prior planning or not. This amendment contributes to a more precise and equitable application of the law, eliminating ambiguities related to the form of guilt required to annul early conditional release in the case of evasion of the obligations established by the court.

The amendments to Article 91 of the Criminal Code of the Republic of Moldova by Law No.136/2024 aimed at clarifying and standardizing the rules on conditional release

from punishment before the term. These changes were made in the context of aligning national legislation with international standards, including the provisions of the European Convention on Human Rights (ECHR), ensuring compliance with the principles of legality and predictability of criminal law.

Article 5 of the European Convention on Human Rights (ECHR) guarantees the right to liberty and security of person, stipulating that no one shall be deprived of his liberty except in the cases provided for by law and in accordance with legal procedures [4, Art.5].

Article 6 of the European Convention on Human Rights (ECHR) guarantees the right to a fair trial, stipulating that everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. The amendments to Article 91 contribute to compliance with these standards by clarifying the procedures relating to conditional release, thereby ensuring the transparency and predictability of criminal proceedings. These legislative changes are intended to ensure that decisions on conditional release are taken in accordance with the principles of a fair trial, as set out in Article 6 of the ECHR [4, Art.6].

According to Article 7 of the ECHR, no one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the penalty that was applicable at the time the criminal offence was committed [4, Art.7].

The amendments brought by Law No.136/2024 aimed to eliminate legislative deficiencies and ensure a correct and uniform application of the conditional release measure, for the benefit of both society and the convict.

Thus, it is attested that more and more people detained in penitentiaries in the Republic of Moldova, benefit from the advantages of the institution of conditional release, this mechanism being guided by respect for Human Rights and the European standards stipulated in the Council of Europe Recommendations Rec (2003) 22 on conditional release and Rec (2003) 23 on the management of prisoners sentenced to long or life sentences will be cited.

Regarding prisoners sentenced to life imprisonment, until the amendments made by Law No.136 of 06.06.2024, the minimum term that they had to serve before being eligible for conditional release, in the Republic of Moldova, was regulated by the Criminal Code and was 30 years.

However, the minimum term has changed over time. The Criminal Code of 24.03.1961 (the old Criminal Code) stipulated that prisoners sentenced to life imprisonment could benefit from conditional release after serving 25 years of imprisonment. The Criminal Code adopted in 2002 increased the minimum term from 25 to 35 years, and subsequently, in 2009, it decreased to 30 years.

When the Criminal Code of the Republic of Moldova was amended in 2002 and the 25-year term was increased to 35 years, prisoners sentenced to life imprisonment sent a request to the Parliament's legal committee to provide an interpretation of how the rules would be applied, and whether this increase in the threshold would apply to those who were convicted before the new Criminal Code entered into force. In the official response of the Parliament's Legal Committee, the chairwoman of the committee, Maria Postoico, confirmed that based on Art.10 para.(2) of the Criminal Code, according to which the criminal law cannot have a retroactive effect that would worsen the person's situation,

the amendments will not apply to a person convicted under the old law.

From a more general perspective, the 30-year term seems excessive in some cases. The crimes for which lifers were sentenced vary significantly, their age relative to the age at which they committed the crime must also be taken into account, as well as their readiness for release. The 30-year term is one of the longest in Europe, longer than in Romania or Ukraine and double that of Germany and Norway. In its analysis of the parole practice of various Council of Europe countries, the ECtHR concluded that there is clear support in European countries for a "mechanism guaranteeing a review after 25 years".

Given the increasing number of life sentences in the Republic of Moldova, despite the decline in crime rates and the likely decrease in the seriousness of the crimes, it was reasonable to reduce the number of years before life prisoners are eligible for review. There is no obligation on the state to release them if there are reasonable penological reasons for detaining them beyond the minimum term. However, detention without penological reasons is contrary to both national law and ECtHR case law, reducing the prospect of their successful integration into the community after release.

Thus, reducing the review period from 30 to 25 years of imprisonment is a necessary and expected thing, being in line with the period of most European countries, while also contributing to the elimination of uncertainties related to the application of the Law. These changes can be qualified as a premise for subsequent convictions of the Republic of Moldova at the ECHR, regarding the violation of Art.3 and Art.7 of the ECHR [5, p.101-106].

At the same time, reducing this term of detention for persons sentenced to life imprisonment will also have positive effects on the phenomenon of prison overcrowding and will allow for the conditional release of prisoners earlier, significantly reducing the number of those occupying prison places for indefinite periods, thus contributing to the release of prison space.

The prospect of parole can encourage prisoners to adopt appropriate behavior and participate in rehabilitation programs, knowing that there is a possibility of release before the full term of the sentence. The implementation of such measures reflects a humanitarian and progressive approach to the penal system, in line with international recommendations on the treatment of prisoners and the reduction of prison overcrowding.

However, it is important to note that the actual impact of this provision on prison overcrowding depends on several factors, including the number of prisoners eligible for parole and the strict criteria applied in the process of evaluating their behavior and social reintegration.

The problem of prison overcrowding is closely linked to the functioning of national criminal justice systems and the values, ideas and traditions behind each system. These values, ideas and traditions are the result of a very long process and are sometimes difficult to change, because they reflect history as well as cultural and social realities and are also partly based on political choices. Moreover, penal systems are often a patchwork of rules that have developed on a case-by-case basis over a long period of years or even centuries, meaning that the general lines and principles have never been analysed as a whole, or at least not very often. Imbalances within the system, such as overpopulation, are reflections of these realities and are therefore difficult to resolve. Social evolution and change may also not have been reflected in penal legislation in a coherent and timely manner [6, p.13-14; 21].

According to the Report on the activity of the penitentiary administration system

for 2024, under the terms of Art.91 of the Criminal Code (conditional release from criminal punishment before the term), during 2024, 137 convicts were released (in 2023 – 187), which denotes a decrease of 26.74% [7, p.9].

Conclusions. The institution of conditional release in the Republic of Moldova represents an essential legal mechanism for balancing the repressive and educational purpose of punishment. When applied correctly, it contributes to the rehabilitation of convicts and the protection of society, while ensuring respect for the fundamental rights of persons in detention.

The protection of the rights of prisoners in the process of conditional release is a very important aspect to prevent abuses and to ensure a fair trial. There are several measures to protect the fundamental rights and freedoms of these categories of persons, namely:

– The right to a fair trial: the detainee has the right to a fair hearing before a judicial commission that decides on release;

– Right to defense: can benefit from legal assistance to challenge an unfavorable decision;

– The right to reintegration: authorities are obliged to provide support for integration into society through counseling, rehabilitation programs and support in finding a job.

– Protection against discrimination: decisions regarding conditional release must be made without discrimination, regardless of race, religion or social status.

Protecting prisoners' rights in the parole process requires a balance between public safety and individual rehabilitation. Countries that invest in reintegration programs have lower recidivism rates, demonstrating that properly implemented measures can contribute to a more effective and humane penal system.

The amendments made to Article 91 of the Criminal Code of the Republic of Moldova by Law No.136 of June 6, 2024, bring several important conclusions:

Making the suspension of sentences more flexible: the new provisions introduce a more flexible approach to conditional suspension of sentence execution. Courts can apply this measure under clearer conditions, favoring the rehabilitation and social reintegration of convicted persons.

Emphasis on rehabilitation: the changes aim to encourage convicts to adopt correct behavior during the probation period. Thus, if no new crimes are committed and the imposed obligations are respected, there is the possibility of release from punishment.

Clarification of the term for the enforcement of the complementary penalty: it has been established that the term for the application of the complementary penalty, such as the prohibition to hold certain positions, begins from the date the judgment becomes final. This clarification eliminates ambiguous interpretations and ensures a more uniform application of the law.

The objective of humanizing justice: the amendments reflect a trend towards humanizing penal policy, offering those convicted of minor crimes an opportunity for correction, thus reducing overcrowding in prisons and promoting social responsibility.

Increased accountability during the probation period: the new provisions emphasize rigorous monitoring of compliance with obligations during conditional suspension, which may contribute to reducing recidivism.

These legislative changes create a balance between the application of justice and providing a real chance for social reintegration, thus strengthening the principles of fair-

ness and accountability in the penal system.

In conclusion, the amendments to Article 91 of the Criminal Code of the Republic of Moldova have a significant and positive impact on the national legal system. They contribute to the creation of a clearer, fairer and more efficient legal framework, promoting both respect for Human Rights and the consolidation of the rule of law. Furthermore, these amendments are an important step towards modernizing the penitentiary system and aligning it with European and international standards. By creating a clear and fair legal framework, social and democratic values are strengthened and decisions of national courts are based on objective and transparent criteria.

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PREVENTION OF CRIMES COMMITTED BY ORGANIZED CRIMINAL GROUPS: COMPARATIVE STUDY OF ROMANIAN AND MOLDOVAN LEGISLATION

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Summary

This article presents a comparative analysis of the legislative and institutional mechanisms aimed at preventing crimes committed by organized criminal groups in Romania and the Republic of Moldova. The study seeks to identify similarities and differences between the two legal systems, considering national legal frameworks, European and international influences, and relevant judicial practices. Key aspects examined include the legal definition of organized criminal groups, special investigative methods, international cooperation, and the role of specialized institutions. Based on the comparative analysis, the article proposes recommendations to enhance the effectiveness of measures for preventing and combating organized crime, particularly through the harmonization of legislative standards and the strengthening of the operational capacities of competent authorities.

Keywords*: *organized crime, organized criminal group, prevention, comparative legislation, crime combating, international cooperation, special investigative methods, legal security, etc.

Introduction. In an era where organised crime poses a significant threat to public order and national security on an international scale, the prevention and suppression of offences committed by organised criminal groups have become strategic priorities for most states. Romania and the Republic of Moldova, neighboring countries with converging legal traditions, face similar challenges in implementing legislative and institutional mechanisms aimed at combating these complex forms of criminality.

Organised crime impacts not only national security but also exerts a detrimental influence on the social and economic environment. Illicit activities such as drug trafficking, human trafficking, corruption, and money laundering are among the operations conducted by these groups, undermining state stability, eroding the authority of institutions, and diminishing public trust in law enforcement agencies and mechanisms for maintaining public order.

This comparative study aims to analyze and evaluate the criminal prevention measures targeting offenses committed by organized criminal groups in Romania and the Republic of Moldova. The examination of normative provisions, corroborated with an analysis of judicial practice, will highlight the strengths and shortcomings of each legal system.

Consequently, this study seeks to contribute to a deeper understanding of the phenomenon of organized crime and to facilitate the development of more effective countermeasures.

In this context, it should be noted that in Romania, the prevention and combating of crimes committed by organized criminal groups are regulated by the Criminal Code, as

well as by other specialized normative acts. Romanian legislation has largely aligned with international and European standards, including the UN Convention against Transnational Organized Crime (the Palermo Convention) and relevant European Union directives.

The Romanian criminal legislation contains explicit provisions criminalizing the activities of organized criminal groups. Specifically, according to Article 367 of the Criminal Code, the establishment of an organized criminal group, participation in such a group, or providing support to it constitutes distinct offenses, punishable by imprisonment ranging from one to five years. If additional crimes are committed within the group, the penalties are aggravated in accordance with the severity of the offenses perpetrated.

The Romanian legislator has defined in para. (6) Art.367 the notion of "*organized criminal group*" as a structure formed by three or more persons, constituted for a specific period of time and having the purpose of committing one or more crimes. Essential to the definition of such a group is the character of organization and coordination of activities, which distinguishes the organized criminal group from crimes committed by several persons spontaneously.

Law No.39/2003 on the prevention and combating of organized crime is a special legislative act adopted to regulate the legal framework applicable to this complex criminal phenomenon. The act stipulates a legal definition of organized crime, establishes specific procedures for the investigation of crimes committed by organized criminal groups and regulates the mechanisms of inter-institutional cooperation for the prevention and combating of organized crime.

At the same time, this normative act establishes procedural activities specific to the criminal prosecution phase, giving the judiciary authorities the possibility to resort to special investigative techniques, such as interception of communications, surveillance or the use of undercover agents for the purpose of infiltrating organized criminal structures.

There are also tougher penalties for offences committed within an organized criminal group than for similar offences committed by individuals.

In view of the transnational nature of crimes committed by organized criminal groups, the above-mentioned law promotes international cooperation by fostering the exchange of information and resources between the competent national authorities and specialized international organizations such as Interpol and Europol. The law also facilitates cooperation with the judicial authorities of other Member States of the European Union with a view to making the prevention, investigation and combating of organized crime more effective [25, p.211].

Also, in this context we can reiterate the provisions of Law No.508/2004 on DIICOT. Thus, the Romanian legislator stipulated that the Directorate for the Investigation of Organized Crime and Terrorism is the centralized structure for combating organized crime. DIICOT deals with complex cases of organized crime, including human trafficking, drugs, cybercrime, smuggling and money laundering. DIICOT has a corps of specialized prosecutors and police officers with the ability to use advanced investigative techniques and to work closely with other institutions. It also works with the Romanian Intelligence Service (SRI) and other national security structures to prevent major risks to state security.

According to Law No.78/2000 on the prevention, detection and sanctioning of corruption, although its main object is the fight against corruption, it is also of significant relevance in the context of organized crime. This interference is due to the fact that organized criminal groups often manifest economic interests and resort to corrupt acts,

such as money laundering and trafficking of influence, to protect and expand their illicit activities.

The law establishes strict sanctions for acts of corruption that support or facilitate the activities of criminal networks. Practices such as trafficking of influence or taking bribes can be used by members of criminal groups to obtain institutional protection or to obstruct the course of justice. In this context, both the Directorate for the Investigation of Organized Crime and Terrorism (DIICOT) and the National Anticorruption Directorate (DNA) are empowered to conduct complex investigations in such cases.

At the same time, the Criminal Procedure Code regulates separately the procedural instruments applicable to offences committed by organized criminal groups. In this respect, specific preventive measures are provided for, proportionate to the high degree of social danger of these acts, as well as special investigative techniques, which are indispensable for combating the phenomenon. These include the interception of communications, technical surveillance and controlled deliveries, which enable the competent authorities to accurately document the illicit activities carried out by complex and well-organized criminal structures [30, p.176].

The procedure for the protection of witnesses and collaborators of justice in cases concerning organized crime is regulated by Law No.682/2002 on witness protection. According to it, persons who provide the authorities with relevant information on the activities of criminal groups may benefit from special protection measures. These measures include a change of identity, relocation and, in situations of extreme risk, even integration in another state in order to ensure the personal safety of witnesses.

The Criminal Code and the Criminal Procedure Code also provide for the possibility of reduced sentences for defendants who cooperate with the prosecution by providing significant information on the composition, structure or activity of organized crime groups. This legal strategy is designed to encourage the dissociation of members of such groups and to provide the authorities with an internal source of information, helping to destabilize criminal networks and facilitate their disintegration.

Romania is a signatory to several international treaties and conventions on the fight against organized crime, including the United Nations Convention against Transnational Organized Crime (Palermo Convention, 2000). In line with the provisions of these international legal instruments, national legislation has been adapted to include specific obligations related to international cooperation, extradition of wanted persons and recognition of foreign judgments. An eloquent example of this is the use of the European Arrest Warrant (EAW), a mechanism established at EU level and regulated in Romania by Law 302/2004 on international judicial cooperation in criminal matters. The EAW simplifies and speeds up the procedures for surrendering suspects or convicted persons between Member States and is an essential tool in the fight against cross-border organized crime.

Romania frequently uses this mechanism to facilitate the apprehension and transfer of persons involved in complex criminal activities, cooperating effectively with other EU Member States. In addition to the repressive dimension, the Romanian authorities have also started to implement prevention and education-oriented policies, especially in the areas of trafficking in human beings, drug trafficking and cybercrime. The education and awareness-raising programs for the general public, carried out in cooperation with national and international institutions, target young people in particular, trying to reduce their vulnerability to attempts to recruit them into criminal networks. Information

campaigns emphasize both the legal risks and consequences of involvement in criminal activities and their moral and social dimension. Through these legislative, operational and preventive measures, Romania aims not only to combat organized crime, but also to prevent it by reducing the recruitment base and strengthening international cooperation, thus aligning itself with the standards assumed at the level of the European Union and the United Nations [28, p.143].

In the Republic of Moldova, the legislative framework on combating and preventing crimes committed by organized criminal groups is included in specific provisions of the Criminal Code, Criminal Procedure Code, as well as in a number of special laws. This legislative framework was developed in accordance with international standards, in particular the provisions of the United Nations Convention against Transnational Organized Crime (Palermo Convention), as well as the European Union directives in the field of criminal justice and the fight against organized crime. According to the Criminal Code of the Republic of Moldova, Article 284 expressly criminalizes the "creation or leadership of a criminal organization", as well as "joining or supporting the activity of a criminal organization", establishing custodial sentences of up to 15 years for initiators and leaders, and up to 8 years for participants and supporters.

According to the criminal legislation, an organized criminal group is characterized by a hierarchical structure, long-term activity, with the aim of committing multiple or particularly serious crimes. Its activity requires careful planning, coordination between members and the use of dissimulative methods to avoid criminal liability. In addition, participation in such a group is an aggravating circumstance for serious crimes such as murder, trafficking in human beings, drug trafficking, corruption or cybercrime, reflecting the legislator's intention to severely punish organized forms of crime. These regulations strengthen the efforts of our authorities to combat organized crime, both through repressive means and through international cooperation and continuous adaptation to the requirements of external partners in the field of security and criminal justice. The legislator has included in the content of the Criminal Procedure Code the use of special investigative methods for cases of organized crime, including interception of communications, infiltration of undercover agents, surveillance and monitoring of financial activities, etc.

We note that the Criminal Procedure Code of the Republic of Moldova provides for procedural provisions essential for the effectiveness of the fight against organized crime. These include the possibility of extensive confiscation of assets obtained through criminal activities, a measure which plays a significant role in neutralizing the economic motivation underlying many crimes of this type. In the same sense, the law allows for the application of rigorous preventive measures, such as preventive arrest and extended detention of criminal groups members', in order to prevent the continuation of illegal activities and to protect witnesses or collaborators of justice. As regards investigative activity, Law 59/2011 on special investigative activity establishes a clear legal framework for the use of special methods of intelligence gathering, such as monitoring communications, infiltration of agents in criminal networks or operational surveillance. This law also provides for strict measures to guarantee the confidentiality of the information obtained, limiting its use exclusively to lawful purposes and criminal proceedings.

In parallel, Law No.3/2018 on preventing and combating money laundering and terrorist financing plays a crucial role in countering the financial mechanisms that fuel the activity of criminal groups. While the main objective of this law is to prevent money laun-

dering and block terrorist financing, it has direct applicability in the context of organized crime, as many criminal networks resort to money laundering schemes to disguise the illicit origin of funds and logistically support illegal activities. The law imposes strict obligations on financial institutions to report suspicious transactions and to cooperate with the competent authorities to identify illicit financial flows. At the same time, the financial authorities are given increased powers to verify the source of funds, monitor transactions and impose restrictive measures where there are significant risks. In addition, the national legislative framework supports international cooperation in this area, promoting the exchange of information and mutual assistance with specialized international bodies, which strengthens Moldova's capacity to face the challenges posed by cross-border organized crime. [31, p.227].

The witness protection procedure is a fundamental pillar in the legal system of the fight against organized crime. Therefore, witnesses who contribute to the identification of activities carried out by criminal groups may be exposed to significant risks, which require the adoption of special protection measures, such as change of identity, relocation or anonymous participation in the trial. In the Republic of Moldova, legislation provides clear instruments for the protection of witnesses and collaborators, especially in cases involving criminal organizations. These provisions are in place not only to protect the physical and psychological integrity of witnesses, but also to guarantee the efficiency of the criminal process by stimulating cooperation with law enforcement bodies. The protection of witnesses is also closely linked to international cooperation, an area in which the Republic of Moldova has signed extradition treaties with numerous states and actively cooperates with international bodies such as Interpol and Europol. Through bilateral and multilateral agreements, our authorities coordinate their activities in the fight against transnational crime, exchange operational intelligence and organize joint actions, thus strengthening their capacity to respond to security threats.

In terms of prevention and public education measures, the authorities of the Republic of Moldova carry out public information and legal education campaigns aimed at raising public awareness of the risks of involvement in illegal activities, in particular trafficking in human beings and drugs. Education programs in schools and communities emphasize awareness of a culture of legality and respect for the rule of law. Such preventive measures are essential to reduce social vulnerability and limit the scope for recruitment by criminal groups.

The Republic of Moldova has made significant progress in the fight against organized crime through the adoption of a strengthened legislative framework and intensified cooperation at both inter-institutional and international level.

Comparative analysis of organized crime prevention measures in Romania and the Republic of Moldova. Comparison of organized crime prevention measures adopted by Romania and the Republic of Moldova reveals structural similarities, but also significant differences in terms of approach, available resources and efficiency of implementation. We note that the legislators in both countries have developed dedicated legislative frameworks, set up specialized structures to combat the phenomenon and integrated elements of international cooperation into their strategies. However, discrepancies in institutional capacity, level of technical equipment, available human resources, as well as the particularities of criminal networks, whether domestic or cross-border, directly influence the effectiveness of these measures. Thus, while Romania benefits from a strengthened in-

frastructure and full integration into European security and criminal justice mechanisms, the Republic of Moldova is in a continuous process of adapting and strengthening its institutional and legislative instruments in an attempt to respond effectively to the challenges posed by organized crime.

The legislative framework: consolidation and applicability. The legislative framework on the fight against organized crime is significantly more consolidated in Romania, where national regulations have been gradually harmonized with European Union standards. We can mention with certainty that Romania has a complex legal system, constantly adapted to the current requirements of the criminal phenomenon, which includes rigorous provisions in the Criminal Code and the Criminal Procedure Code. An important instrument is the measure of extended confiscation of illicitly acquired assets, which is effectively applicable due to the existence of well-defined institutional and procedural mechanisms. Also, the application of the European Arrest Warrant constitutes a significant advantage in the context of European judicial cooperation, allowing for the swift extradition of wanted persons. On the other hand, the Republic of Moldova has made remarkable progress in updating its criminal legislation, including the introduction of extended confiscation and the regulation of special investigative activities. However, the application of these instruments is hampered by limitations in human and technical resources, institutional capacity still in formation and the complexity of the cases investigated. In this context, strengthening the mechanisms for implementing the asset confiscation legislation and extending international cooperation, in particular with EU Member States, could significantly contribute to increasing the efficiency of the fight against organized crime in the Republic of Moldova and bringing it in line with European standards in criminal matters.

The capacity of specialized institutions and agencies. Romania benefits from a complex and well-structured institutional network, within which the Directorate for the Investigation of Organized Crime and Terrorism (DIICOT) and the General Inspectorate of the Romanian Police have a central role in the fight against organized crime. These institutions have advanced logistical and technical resources, as well as highly specialized staff, which allow them to carry out complex investigations. Special investigative techniques, such as interception of communications, infiltration of undercover agents, surveillance and witness protection, are used effectively, helping to disrupt transnational criminal networks. The access to modern infrastructure, the experience gained in international cooperation and the legislative framework harmonized with European standards, which gives Romania a considerable advantage in dealing with organized crime activities.

Comparatively, in the Republic of Moldova, the competent institutions, like Prosecutor's Office for Combating Organized Crime and Exceptional Cases (PCCOCS) and the Police General Inspectorate, are making sustained efforts in this area, but face significant limitations related to technical resources, operational capacity and the degree of specialization of staff. Although activities such as interception and extended seizures are legally foreseen and used, the effective application of these methods often depends on the support of international partners and cross-border collaborations. In the absence of substantial investment in investigative infrastructure and continuous training, the conduct of complex operations remains a challenge.

We believe that in order to improve the capacity of the competent bodies of the Republic of Moldova to prevent and combat organized crime, it is necessary to increase funding for the purchase of modern equipment, develop the skills of operational staff

through specialized training, and strengthen international cooperation. These measures would help to streamline cases and strengthen institutional capacity in the face of increasingly sophisticated criminal networks.

International and regional cooperation. Romania's membership of the European Union offers a significant advantage in the fight against organized crime, through access to legal and operational instruments such as the European Arrest Warrant, cooperation with Europol and active participation in European criminal justice networks.

These mechanisms facilitate the rapid exchange of information, the coordination of cross-border investigations and the efficient extradition of suspects, which has enabled the Romanian authorities to actively contribute to the disruption of international criminal networks. The support provided by European partners reinforces the operational capacity of national institutions and contributes to the continuous alignment of investigative practices with EU standards.

In the Republic of Moldova, international cooperation remains an essential dimension in preventing and combating organized crime, especially in the context of geographical location and institutional vulnerabilities. EU candidate status, however, limits direct access to some European instruments and initiatives, which imposes a greater dependence on bilateral and multilateral agreements. Moldova is actively cooperating with Romania, Ukraine, Interpol and Europol, but the effectiveness of these efforts depends on broadening and deepening international partnerships.

In this respect, a strategic direction for sustainability would be to extend cooperation agreements with EU Member States and specialized international agencies. This extension could facilitate Moldova's access to technical resources, training programs and operational platforms that are essential for developing an effective response to transnational organized crime.

Information and crime prevention campaigns. Romania constantly carries out information and education campaigns in vulnerable communities, in partnership with non-governmental organizations and international institutions. These initiatives have had a significant impact, particularly in preventing human trafficking and recruitment for criminal activities. Through a strengthened institutional infrastructure and constant funding, the Romanian authorities are succeeding in implementing awareness-raising programs at national level, tailored to different risk groups.

In the Republic of Moldova, information campaigns are also present, but they are mainly carried out with the support of international organizations and NGOs, with limited government funding. Despite these constraints, campaigns run in cooperation with the International Organization for Migration (IOM) and other international entities have helped to reduce vulnerability among young people and the rural population, where the risk of recruitment by criminal groups is higher.

We believe that in order to increase the effectiveness of prevention measures, the Republic of Moldova could benefit from increased investment in legal education and public awareness campaigns, as well as from expanding collaboration with a larger number of international organizations and regional partners. In addition, the development of closer partnerships with Romania could facilitate access to European resources, best practices and programs, helping to strengthen Moldova's capacity to prevent organized crime through educational and social tools.

Romania and the Republic of Moldova have made considerable progress in prevent-

ing and combating organized crime, adapting their policies and interventions to their own institutional capacities and international status. Romania is characterized by a mature legislative framework, a strengthened institutional system and access to European judicial and police cooperation instruments and mechanisms, which enable it to effectively manage complex investigations and provide adequate protection to victims. On the other hand, the Republic of Moldova, despite more limited resources and restricted access to some international platforms, has adopted substantial legislative reforms and increasingly relies on regional cooperation, in particular with Romania and Ukraine.

A key finding, in terms of the regulatory framework and implementation policies, is that both countries have well-defined legislation in place to combat organized crime. However, Romania stands out for its efficiency in implementing these regulations, thanks to a combination of institutional experience and the allocation of proportionate resources. On the other hand, the Republic of Moldova has difficulties in transposing the rules into practice, which highlights the need to optimize administrative and judicial procedures.

The differences become more marked in terms of institutional capacities and resources. Romania benefits from well-equipped specialized agencies with trained staff and modern infrastructure, which allows for efficient operations against criminal networks. In contrast, Moldovan institutions require additional investment in technical equipment and continuous training programs for staff, with international financial and technical support being crucial to bridge these gaps.

International cooperation is a strategic element for both countries. While Romania capitalizes on the advantage of EU membership by using mechanisms such as the European Arrest Warrant and Europol partnerships, in the case of Moldova, cross-border cooperation is becoming essential to counter criminal networks. Expanded access to intelligence sharing tools and joint operations with EU Member States is a priority direction for strengthening the Moldovan authorities' response capacities to transnational threats.

Conclusions and recommendations. Based on the above, the following recommendations that could strengthen the national capacity to prevent and combat organized crime in the Republic of Moldova are made:

1. *Modernization of infrastructure and training*. It is essential to invest in the technological infrastructure of law enforcement institutions, as well as the continuous development of professional skills of the personnel involved in the investigation of organized crime. Thus, the implementation of advanced technologies and participation in specialized training programs will contribute to increasing operational efficiency and bringing national practices in line with European standards.

2. *Intensify regional and international cooperation*. Strengthening bilateral and multilateral partnerships with Romania, Ukraine and other European states is absolutely necessary to streamline the exchange of operational intelligence, harmonize investigative procedures and conduct coordinated actions against cross-border networks. This can be made possible by creating common platforms and integration into specialized international networks, which can ensure a faster and more coherent response to common threats.

3. *Preventing recruitment and protecting vulnerable communities*. Expanding information campaigns, especially in rural areas and among young people, is a necessary measure to reduce the risk of recruitment into criminal networks. The development of

support services for victims, such as counselling and reintegration centres, is also an important step in reducing the social impact of organized crime and facilitating the recovery of those affected.

In conclusion, the fight against organized crime is a complex and global challenge that requires not only an adequate legislative framework, but also close cooperation between state institutions, international agencies and non-governmental organizations. Given that these criminal networks often operate on a transnational scale, tackling them requires a joint effort by the countries affected, going beyond national borders and based on principles of international solidarity.

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SPECIAL CRIME INVESTIGATION RULES ONE YEAR AFTER THE CHANGE OF LEGISLATION: BETWEEN EXPECTATIONS AND REALITY

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Summary

The article analyzes the special investigative activity one year after the entry into force of the legislative amendments, having as a reference point the Report of the Prosecutor General's Office for 2024. The objectives pursued by the reform, reflected in the information note to the draft amendment to the regulatory framework, are examined, and the results obtained, the difficulties encountered and the possible directions of development are evaluated. The analysis is complemented by theoretical reflections and the jurisprudence of the ECtHR, targeting the key issues arising in the application of special investigative measures in preventing and combating crime. The conclusions aim at harmonizing national regulations with European standards and consolidating practical activities in combating crime.

Keywords*: *special investigation activity, special investigation measures, special investigation techniques, criminal trial, criminal prosecution, evidentiary procedure, purpose test, tasks.

Introduction. Preventing and combating crime is a complex and extremely difficult task, especially when it comes to serious, organized crime involving multiple participants such as organizers, instigators, perpetrators, accomplices, committed with premeditation by cunning perpetrators, well adapted to the contemporary context, marked by technological developments, increased cross-border mobility and diversity of means of communication and information exchange. In order to meet these challenges, it is essential to use special tools capable of facilitating the detection and countering the most sophisticated forms of crime.

Special investigative activity is an essential tool, established over time, which can considerably increase the effectiveness of action to prevent and combat crime [16, p.680]. At the same time, being by its very nature an intrusive activity, special investigative activity entails inherent risks of infringing fundamental rights and freedoms, which calls for rigorous and clear legal regulation, striking a balance between the general interest of society and respect for human rights.

In 2024, three decades have passed since the special (operative) investigative activ-

ity was legislated in the Republic of Moldova, which was previously regulated exclusively at the departmental level, in a manner incompatible with the principles of the rule of law. Attempts to bring the legal framework into line with European standards and the case law of the European Court of Human Rights have resulted in several legislative interventions, two of which, in our view, due to conceptual changes, can be categorized as significant reforms in the regulation of special investigative activity.

The first major reform took place in 2012, when the regulatory framework of special investigative activity was divided into two components: 1) framework law on special investigative activity; and 2) special investigative activity in criminal proceedings. This change materialized through the repeal of Law No.45/1994 [11], the adoption of Law No.59/2012 [12] and the completion of the Criminal Procedure Code with a separate section dedicated to special investigative activity. The consequences and shortcomings of this reform have been widely discussed over the years at scientific conferences, workshops and round tables, and numerous specialized studies and articles have been published.

At the initiative of the Parliamentary Committee for National Security, Defense and Public Order, a wide-ranging process of legislative review was launched, which lasted almost a decade and culminated in the entry into force, at the beginning of 2024, of new legislative amendments marking the second major reform of the field of special (operational) investigative activity.

More than a year after the entry into force of the new regulations, the special investigative activity has faced its first challenges in applying them in practice, and the lessons on the matter have been summarized in the Annual Report of the Prosecutor General's Office. This document, presented to the Parliamentary Committee on National Security, Defense and Public Order, formed the basis of a formal assessment, carried out during the parliamentary hearings in February 2025. In this context, we intend to examine the main conclusions reflected in the report of the Parliamentary Committee [14], through the prism of the stated objectives of the reform, the results achieved, the difficulties encountered in the application of the new rules, as well as possible directions for improvement in the given field. Our analysis will be accompanied by a theoretical-normative interpretation of the problems highlighted, taking as fundamental points of reference the principles of the rule of law and the standards of the case law of the European Court of Human Rights.

Methods and materials applied. This scientific article includes traditional research methods: logic, grammar, analysis and synthesis, deduction and induction, observation and comparison. On the basis of the analysis of relevant materials (national and foreign legislation, specialized literature, notes and opinions on draft laws, court decisions and recommendations, other relevant materials), conclusions and appropriate proposals are formulated.

Discussions and results obtained. In the introductory part of the report of the Parliamentary Committee for National Security, dedicated to the hearing of the final report of the General Prosecutor's Office, there is a very special statement: „Special investigative activity is an essential tool in the fight against crime and ensuring the security of the individual, society and the state". This wording, although it may appear to be a simple statement of principle, carries a particular weight, as it is the first time in recent years that there has been explicit, official recognition at institutional level of the decisive role that special investigation activity plays in the public security architecture. In the past, such

assessments were absent from the public discourse of the authorities, as special investigative activity was predominantly dealt with in a technical, specialist register.

At the same time, the data presented in the report show that the special investigative activity has undergone a noticeable intensification of institutional efforts during the period under review: from crime prevention and ensuring public order to increasing security in places of detention and combating corruption. This trend suggests a more active operational assumption of the preventive function and a wider awareness of the tactical and technical potential of special investigative work.

However, the overall picture is not without contradictions. In contrast to this declaratory commitment, the Prosecutor's Office's report reveals a systemic reluctance to apply the new provisions of Law No.59/2012, materialized by the failure to make use of legal instruments which, at least in theory, should make a decisive contribution to preventing and detecting crime. This restraint amounts not only to a decrease in operational efficiency, but also to a distancing from the spirit of the reform, which aimed – according to the Order of the Minister of Justice No.288 of 03.07.2015 – to improve the regulatory framework in accordance with the difficulties reported, with the aim of preventing and combating crime, protecting fundamental rights and freedoms and strengthening public security [13].

This contradiction is clearly expressed in the officially reported data. According to the General Prosecutor's Office, during 2024, the institution was not referred to authorize any of the special investigative measures provided for in Art.27 para.(1) of Law No.59/2012 – measures that require the authorization of the investigating judge or prosecutor. Thus, in the year 2024, no investigative measures such as interception, tracking by technical means, collection of data from communication providers or undercover investigations were carried out under this Law. Although the report does not contain data on the implementation of measures authorized by the head of the specialized subdivision – such as searching objects, visual surveillance or intelligence gathering – it can be inferred that these were not implemented either. As the difficulties reported are common, regardless of the level of authorization, it shows that we are facing a deeper crisis: the lack of effective implementation of the new legislative rigors.

Among the reasons for the reluctance reflected in the report is the position of the Ministry of Internal Affairs that the latest legislative reform has led to the hollowing out of Law 59/2012 in the segment of crime investigation. Not only the tasks of the law aimed at investigating crimes, but also the grounds for ordering special measures for the purpose of uncovering them have been eliminated. In our opinion, this observation is fully justified. Moreover, the reform has also affected the purpose of special investigative activity, as the express mention of gathering information for the purpose of preventing and combating crime, ensuring state security, protecting the legitimate rights and interests of individuals, uncovering and investigating crimes - an essential aspect in a complex and fluid contemporary security context - has been expressly excluded.

This normative lacuna becomes critical in relation to the express obligation of the investigating officer, provided for in Article 19 para. (2) of Law No.59/2012, to immediately cease the measure, if it appears that a crime is being prepared or committed, and to proceed in accordance with the provisions of the Code of Criminal Procedure. However, in the absence of the legal possibility to apply prior investigative measures to reach this conclusion, the investigating officer is trapped in a vicious circle: he cannot act without

a reasonable suspicion that a crime is being prepared or committed, but neither can he obtain it without acting.

Another major obstacle identified by the Ministry of Internal Affairs is the evidentiary regime of the results of special investigative activity. According to the view of the MIA, the current provisions of Law No.59/2012 do not allow the use of results obtained outside the criminal proceedings as evidence. Although this finding is justified from a practical point of view, it requires an important theoretical clarification: the legal regime of evidence is exclusively within the scope of the Criminal Procedure Code, which establishes the fundamental legal framework of its admissibility. Naturally, Law No.59/2012 cannot confer evidentiary quality to factual data, but only provides operational mechanisms, which must be correlated with the provisions of the Code.

In this regard, it is relevant to note that until the recent reform, Art.93 para.(4) of the CPC allowed the use of the results obtained by the special investigative activity, regardless of whether they originated from proceedings conducted under the Code or under Law No.59/2012. In the current version, however, the scope of such results has been considerably restricted, with only those given in the criminal prosecution being admitted as evidence. As a result, even the results of two measures regulated by the Code – the identification of the subscriber and the gathering of information (Art.134 para.(2) of the CPC) – if made before the criminal prosecution begins, can no longer be used as evidence. This creates a logical and operational rupture between the preliminary investigation and the actual criminal proceedings, with the risk of reducing the effectiveness of the State's actions in the face of modern crime.

In addition, the report highlights a substantial limitation on the applicability of special investigative measures requiring the authorization of the investigating judge. According to Art.27 para.(3) of Law No.59/2012, such measures may be ordered exclusively in cases related to the search for persons evading criminal prosecution, trial or execution of criminal sentence, as well as for the protection of witnesses or other participants in the proceedings. This restrictive wording, although justified by the need to protect fundamental rights, has an undesirable side-effect: it blocks the use of advanced investigative tools in other areas essential for public security, such as prevention of organized crime, terrorism, money laundering, trafficking in arms and ammunition, corruption, trafficking in human beings, illicit drug trafficking, cross-border crime, other serious crime.

This restriction of the application of investigative measures not only reduces the operational capacity of the authorities, but also contradicts the objectives of the reform set out in the information note – in particular that of increasing investigative capacities outside the criminal process. Limiting the measures authorized by the judge exclusively to the executive sphere of criminal proceedings (search of persons) is tantamount to redefining the purpose of special investigative activity, to the detriment of its proactive and preventive components.

In this context, the report formulates a clear and pertinent recommendation: to revise and/or reformulate para.(3) of Article 27, with a view to broadening the possibility of using these measures for purposes compatible with preventing and combating serious and complex manifestations of crime. Such a legislative adjustment would make it possible to capitalize on the tactical, methodological and technical potential of special investigative activity, without compromising judicial guarantees, but on the contrary, strengthening judicial control over intrusive measures applied in strategic contexts.

In addition to the substantive limitations on the scope of authorized measures, the report also highlights a number of legislative gaps and terminological inconsistencies, which affect the clarity and uniform application of the new regulations. These shortcomings are perceived by practitioners not only as technical obstacles, but often as consequences deriving from a decline in the quality of legislation.

One of the most obvious such shortcomings is the lack of a clear deadline for verifying the legality of special investigative measures. According to the report, Law No.59/2012 does not expressly stipulate a time limit within which the investigating judge or prosecutor should rule on the legality of the measures taken. In practice, this omission creates uncertainty and may lead to diverging interpretations. To this end, it is proposed that Article 22 para.(2) let. b) should be supplemented by a new Article 22(2)(c) of the law by specifying a time limit of no more than 5 days from the receipt of the report, in accordance with Art.136 para.(4) CPC. Such an amendment would help to standardize practices and strengthen the control of legality.

Another important issue concerns the differences in the wording between the Criminal Procedure Code and Law No.59/2012 with regard to the measure referred to as „visual surveillance". While Article 138^{11} CPC defines it as "the detection and chronological fixing of actions/actions, positions, movements and contacts of persons, surveillance of immovable property, tracking and tracing of means of transportation and other objects", Article 36^{3} of Law No.59/2012 uses the term "documentation" instead of "fixing" and adds the phrase "with or without photo/video fixing". Although at first sight these differences may seem minor, they give rise to difficulties of interpretation, especially as regards the authorization of the use of technical means [3; 17].

From a doctrinal perspective, visual tracking can be of two types – physical and electronic (technical) [8, p.212] – being used both to uncover latent offenses and to identify the perpetrators, their accomplices, criminal links, other aspects of a criminal nature. The differences in terminology between the Criminal Procedure Code and Law No.59/2012 – i.e. between the terms "fixation" and "documentation" or the express reference to the use of photo/video means – create ambiguities in practice, in particular with regard to the conditions and authorization regime of this measure.

It has been noted in the legal literature that, in criminal proceedings, visual surveillance entails a greater degree of interference in private life, given that the aim is to obtain evidence that may form the basis for holding a person criminally liable. This purpose naturally justifies the establishment of a judicious procedure for authorizing visual surveillance, which the law assigns to the public prosecutor. Outside criminal proceedings, however, the special investigative activity pursues distinct purposes – principally crime prevention and public order – which implies a different level of interference and a different procedure, as the law assigns the authorization of the visual surveillance to the head of the specialized subdivision [9, p.230].

This distinction between purposes and level of interference also explains the differentiated legal regime of the procedure for authorizing special investigative measures, and is also consistent with the fact that the head of the specialized subdivision has no procedural capacity in criminal proceedings, which makes it impossible for him to be involved in activities covered by the Criminal Procedure Code. Therefore, this is not a logical or legislative inconsistency, but an adaptation of the regulatory framework to the nature and purpose of the investigations carried out, which, however, requires further clarification in

the text of the law in order to avoid divergent interpretations in application.

In addition to the issues already mentioned, the report also highlights other significant problems raised by the institutions involved in the implementation of special investigative activity. A particularly important position in this respect is that of the National Anti-Corruption Center (Romanian abbreviated CNA), which draws attention to a systemic shortcoming: the lack of appropriate tools for uncovering criminal acts outside the criminal process.

According to CNA, the special investigative activity is deeply affected by unjustified restrictions, incomplete or incoherent provisions, which generate significant confusion not only for the subjects involved in the implementation of measures (investigative officers), but also for the control bodies – prosecutors and investigating judges. The current legislative ambiguities create a state of uncertainty among practitioners – in particular those who should authorize the measures – who end up not clearly perceiving the rationale and usefulness of carrying out special investigative measures in special cases. As a direct effect, the proactive (or operational as it was treated in the old Law No.45/1994) role of special investigative activity in preventing, combating and detecting crime remains theoretical rather than practical.

Another major problem signaled by CNA is the lack of clear enforcement mechanisms for many of the special measures regulated outside the criminal process. Unlike in criminal prosecution, where the Criminal Procedure Code provides detailed procedures and clear procedural tools, outside criminal prosecution there is no coherent applicable framework for the effective implementation of the measures. For this reason, it has become impossible to adopt a common Regulation on special investigative activity, which should ensure a uniform and standardized approach in the application of investigative measures.

In the context of these shortcomings, the CNA has formulated and officially submitted to the Ministry of Justice concrete proposals to amend Law No.59/2012 in order to adjust it to the real needs of the operational authorities. The proposals aim not only at clarifying terminology and eliminating inconsistencies, but also at extending and detailing the regulations on the effective execution of special measures, in particular outside the criminal process.

Overall, the CNA's comments reflect a painful but necessary reality: the gap between the regulatory text and the real needs of those called upon to apply it in practice. Without a revision of the regulation to ensure predictability, clarity and operational applicability, the reform in the field of special (operational) investigative activity risks remaining merely a well-intentioned legal architecture, but one that is not functional in relation to its stated objectives.

A number of relevant comments were also made by the State Protection and Guard Service (SPGS), which pointed out both the inconsistencies in Law 59/2012 and the difficulty in drafting a common regulation to ensure the uniform and coherent application of special investigative measures. As pointed out by other institutions, the lack of clear mechanisms for the execution of measures outside criminal proceedings creates legal uncertainty and affects the capacity for an operational response.

In contrast to the other institutions, however, the SPGS also came forward with a proposal to broaden the scope of special investigative activity to explicitly include ensuring state security. According to the view expressed, Law 59/2012 should also cover

the protection of persons beneficiaries of state protection, thus broadening the scope of special investigative activity.

In this regard, it was proposed to supplement Article 2 of the Law, which sets out the tasks of the special investigative activity, with the following content: "gathering information on possible facts or events that could threaten the life, physical integrity, freedom of action and health of persons under state protection, as well as jeopardizing the security of the working premises and residences under the guard of the Service". It was also proposed to add a new paragraph to Article 19, which regulates the grounds for ordering special investigative measures, adapted to the specific legal powers of the SPGS.

In addition to these substantive interventions, the SPGS has proposed the introduction of a new special investigative measure: "the collection of data from institutions holding special records", given the particular nature of the information needed to protect persons exposed to security risks. In addition, it was argued that the powers of the head of the subdivision specializing in the authorization of special investigation measures should be extended, to the detriment of the powers currently reserved to the public prosecutor, to allow a more flexible response in cases that cannot be postponed.

Another proposal, which is relevant in the context of the SPGS's institutional mandate, is to extend the possibility of applying special measures authorized by a judge to cases where it is necessary to ensure the security of persons enjoying state protection, foreign dignitaries temporarily in the Republic of Moldova and their family members. In the Service's view, the current limitation of these measures to cases of search or procedural protection is not sufficient to cover the full range of risks that may affect national security.

These proposals outline a broader vision of special investigative activity, going beyond the traditional criminal law framework and anchored in an integrated security perspective. They reflect an increasingly present reality: in the current context, characterized by hybrid threats, cross-border flows and geopolitical volatility, the protection of the individual and the protection of the state are becoming increasingly interdependent and special investigative activity must respond adequately to these demands.

The State Tax Service (STS) also makes a valuable contribution to the analysis of the shortcomings of the current regulatory framework. It points out that, beyond the divergences and ambiguities in the legislation governing special investigative activity, a fundamental problem is the excessive restriction of the categories of offences for which special investigative measures may be ordered outside the criminal process.

In the opinion of the STS, the current regulation prevents the ordering of special measures for latent crimes of a serious and complex nature, such as economic crimes, computer crimes, human trafficking or corruption. These crimes, by their very nature, cannot be discovered without a series of preliminary actions, and the use of special investigative measures outside the criminal process is often the only effective method of revealing and documenting latent criminal actions. Limiting the scope of special investigative measures to certain categories of facts or procedural situations means that the real potential of these tools remains untapped.

This legislative malfunctioning not only reduces the effectiveness of activities to prevent and combat economic and financial crime, but also creates a logical discontinuity between the complexity of modern criminal phenomena and the state's ability to anticipate, and counter them by legal means. Therefore, the STS proposes to amend Art.19 para.

(1) letter a) item 1) of Law No.59/2012, in order to extend the grounds for ordering special investigative measures to these types of offenses, even outside the criminal proceedings.

This observation is particularly pertinent: precisely in the case of economic crimes, corruption or human trafficking, the existence of a reasonable suspicion arises only after preliminary observations, correlations and analysis, often impossible to carry out without specific means. However, if the ordering of special investigative measures is conditional precisely on the prior existence of a reasonable suspicion, a procedural paradox is created which paralyzes investigative activity.

Among the structural causes of the reluctance to apply Law 59/2012, the report also highlights two key legal mechanisms introduced with the reform:

– Verification of the legality of measures by the investigating judge or prosecutor (Art.22 para.(9));

– The obligation to inform post-factum the person concerned by special investigative measures (Art. 22^1).

Although these provisions were introduced with the stated aim of strengthening the control of legality and transparency of intrusive activities, in practice they are perceived as serious obstacles to the operational and confidential conduct of investigations. According to the report, law enforcement authorities avoid applying for authorizations under Law 59/2012 precisely because of these provisions, believing that they may compromise the efficiency and finality of the actions carried out.

In support of a nuanced understanding of the situation, the relevant national case law should be mentioned. The Constitutional Court of the Republic of Moldova has been notified several times regarding the constitutionality of subsequent notification in criminal proceedings, in particular in relation to the imprecision of the deadlines and the risk of affecting the right to defense and a fair trial [5; 6; 7]. The lack of a clear deadline until which notification can be postponed and the ambiguous nature of the correlation of this deadline with the moment of completion of the criminal investigation were invoked, among others.

In its assessment, the Court noted that the law cannot exhaustively list all the reasons and deadlines for postponing the notification, leaving this assessment to the investigating judge or prosecutor, depending on the circumstances of each case. In all the cases analyzed, the notifications were considered inadmissible or unfounded.

Outside the criminal process, notification is made pursuant to Art.22 para.(9) of Law No.59/2012, and the prosecutor is obliged to inform the person within 15 days of the conclusion assessing the legality of the measure, by registered letter. Art. 221 also provides for the possibility of postponing the notification – either provisionally (for periods of up to 30 days) or permanently (for periods of up to 180 days).

From an international perspective, there are divergent doctrinal opinions. A renowned international expert emphasizes that, in principle, subsequent notification is "important" and "preferable", especially in the case of communications surveillance, where the person concerned risks never finding out about the interference in his or her private life and, implicitly, being deprived of the right to challenge the legality of the measure or to request compensation [10, p.18].

However, other experts point out that the lack of notification does not automatically amount to a disproportionate interference [15, p.41]. On the contrary, in certain situations, it is precisely the absence of notification that ensures the effectiveness of the

measure, especially in the context of measures with a long-term purpose or with a risk of compromising the methods and agents involved.

The ECtHR has repeatedly recognized that notification may be excluded when the risk of compromising security persists, even years after the suspension of the measure [2, § 58]. In the case of Ekimdzhiev v. Bulgaria [1, § 93], the Court, however, sanctioned the absolute exclusion of notification, considering that a legislation that does not allow for post-factum notification at all is incompatible with the right to an effective remedy, since the affected person has no means of challenging the interference. The ECtHR insisted that, from the moment that notification no longer compromises the purpose of the measure, it must be made, in order to protect the rights provided for in Article 8 of the Convention.

Although the obligation to notify and verify the legality of measures reflects an alignment with European standards on the protection of fundamental rights, the way in which these mechanisms were regulated in Law No.59/2012 generated a perception of procedural rigidity and application uncertainty, which inhibits their use in practice. Thus, instead of contributing to the consolidation of special investigative activity, these mechanisms became blocking factors, determining a significant reluctance in implementation and, consequently, a diminution of the proactive function of special investigative activity.

However, in order to fully understand the causes of this reluctance and, implicitly, to correctly assess the efficiency of the reform, it is necessary to return to the context that generated the initiative to amend the regulatory framework.

Although the 2023 legislative reform was designed with the intention of rationalizing, clarifying and streamlining the legal regime of special investigative activity [13, p.3], the reality of the application of these provisions reveals a significant disjunction between the normative vision and institutional practice. This rupture is manifested not only by a generalized reluctance to use the instruments made available by the new legal framework, but especially by the structural inadequacy of the regulations with respect to the real practical needs of the competent authorities.

As we have argued previously, the fundamental purpose of the reform was articulated around the distinction between special investigative activity within and outside the criminal process – a distinction that is legitimate in theory, but which in practice has generated normative fractures and institutional blockages. Instead of conferring coherence and functionality to the special activity, the strict delimitation between the two regimes: 1) Special investigative activity outside the criminal process; and 2) Special investigative activity within the criminal process – has led to the unjustified complication of procedures, to the paralysis of proactive investigative means and to the reduction of the authorities' room for maneuver in the face of latent, organized or transnational crime.

The problems of application – the lack of instruments, the terminological inconsistencies, the normative vacuum regarding the execution of special investigative measures, the ambiguities regarding notification, the lack of guarantees for the valorization of the results of special investigative activity outside the criminal process, but also the lack of confidence of investigative officers in the legal framework – are not isolated accidents or dysfunctions. They are the direct expression of an unsuccessful reform that, despite its declared intentions, failed to harmonize, in a coherent and applicable way, the imperatives of guaranteeing rights with the realities on the ground of investigative work.

Against this background, it becomes obvious that the application of Law No.59/2012

was not refused due to lack of will, but due to the technical-normative impossibility of capitalizing on it within functional parameters, without the risk of compromising the investigation or making the institution itself vulnerable. Paradoxically, the reform – intended to strengthen the special investigative activity – produced, in practice, self-limiting effects, transforming a mechanism intended to protect the public interest into a bureaucratic system in which efficiency is sacrificed for regulatory complexity.

Therefore, for special investigative activity to regain its role as a strategic operational tool in preventing and combating crime, a recalibration of the legislation is necessary, one that starts from the real premises of special activity – its conspiratorial nature, its proactive character and its essential role in the architecture of public security – and ensures, at the same time, respect for fundamental rights through control mechanisms that are not only compliant with international standards, but also functional in practice.

Conclusions and recommendations. One year after the entry into force of the new legal architecture on special investigative activity, the analysis of the Report of the Prosecutor General's Office complemented by the institutional positions expressed during the parliamentary hearings, outlines a picture dominated by collisions and inaccuracies between the intentions of the reform and the actual results of its application. The 2023 reform was designed to clearly separate the special investigative activity carried out within the criminal process from that carried out outside it, thus strengthening the control of legality and respect for fundamental rights. However, the implementation of the new regulations was marked by reluctance, normative ambiguities, operational difficulties and the lack of clear functional tools.

The conclusions of the analysis lead to the finding that the efficiency of the special investigative activity was negatively affected by a series of cumulative factors:

• Unjustified restriction of the grounds for applying special investigative measures outside the criminal process;

• Lack of clear mechanisms for the execution of the regulated measures;

• Terminological ambiguities and inconsistencies between Law No.59/2012 and the Criminal Procedure Code;

• Perception of post-factum verification and notification procedures as obstacles to the conduct of special investigative activity;

• Impossibility of capitalizing on the results of special investigative measures as evidence, in the absence of an adequate correlation with the rules of criminal procedure;

• Difficulty in developing a common regulation for the application of special investigative activity, due to the normative vacuum and divergences of interpretation.

From this perspective, a legislative recalibration is urgently needed, which takes into account investigative realities, ensures a coherent applicability of legal provisions and maintains a functional balance between legal guarantees and the operational needs of the authorities.

In this sense, the analysis of the difficulties encountered in the application of the new regulations reveals the need for an integrated effort to review, interpret and operationalize Law No.59/2012. It is necessary for legislation in the field of special investigative activity to be not only clearly formulated and normatively coherent, but also adapted to institutional realities and contemporary challenges in the field of crime.

In this direction, several priorities are outlined:

• Drafting a Commentary to Law No.59/2012 in relation to the provisions of the

Criminal Procedure Code, which would support a uniform application of the norms and clarify the differences in legal regime between special investigative activity carried out within and outside the criminal process;

• Developing methodological and operational tools, such as application guides, procedural sheets and practical evaluation mechanisms, which would support investigation officers in the correct application of special investigative measures;

• Promoting an institutional culture of collaboration between all the links involved – officers, prosecutors, judges – in order to effectively implement the regulatory framework, in the spirit of European standards.

Given that security challenges are becoming increasingly sophisticated, and crime is continuously refining its means of action, special investigative activity must remain an essential instrument of the rule of law in the fight against crime. The efficiency of this activity cannot be conceived outside a clear, coherent and functional legal framework, which ensures both the efficiency of investigations and the respect for the fundamental rights of the person.

Legislative reform is not an end in itself, but a continuous process of adjustment between practical reality and the legal ideal. From this point of view, the future of special investigative activity depends not only on the quality of the law, but also on the institutional capacity to understand, interpret and apply it in a responsible and unitary manner.

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EUROPEAN STANDARDS IN THE FIELD OF PREVENTING TERRORIST CRIMES

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Summary

In the modern world, terrorism has become one of the most pressing threats and real challenges to the security of all humanity, regardless of the social classes of society. The proportions of manifestation and the impact of this scourge on the development of states and the security of citizens in the European space are the objectives of this scientific research.

Also, this paper lists some measures adopted by international organizations regarding the criminalization of ancillary components of terrorist acts, such as recruiting, training, preparing, mobilizing individuals who are members of terrorist groups or organizations. To prevent, mitigate and adequately criminalize these serious violations of universal values and democratic principles, it is necessary to adopt European rules unanimously by all EU Member States. At the same time, global cooperation by combining the efforts of international organizations with those of national governments will facilitate efforts in the combating terrorism.

Keywords: terrorism, recruitment, training, European anti-terrorist legislation, European organizations, international security, public order.

Introduction. Currently one of the most serious violations of universal values and democratic principles including ensuring and respecting the rule of law, justice, human dignity, tolerance, equality, fundamental human rights and freedoms, it is constituted by terrorist acts.

Although terrorism itself is not new, the current trend of this phenomenon worldwide is undoubtedly determined by the dynamics of the evolution of information technologies and the transport industry that allow and considerably facilitate contacting and remote communication with any person from any geographical point, as well as the rapid movement of people interested in fighting alongside terrorist groups or receiving training from them in hard-to-reach territories, especially in conflict areas such as Iraq, Lebanon, Palestine, Syria, Afghanistan, etc.

Analysis of reports from international agencies documenting the situation and trends of terrorism in the EU, such as the Europol Report for 2014 (TE-SAT) [1], highlights the use of the internet and social media platforms as communication tools for planning, recruiting, training, preparing, propagating and financing terrorism. For the mentioned period, the report indicates that the scale of the phenomenon is increasing – over 3,000 people left the EU for conflict zones. Currently, it is estimated that over 5,000 people will be reached, while it was reported that in some EU Member States the number of people returning has increased.

One of the conclusions of the Europol Report states that: "The EU continues to serve as a hub for financing, logistics, sanctuary and recruitment for terrorist group which

mainly operates outside Europe. This applies particularly, but not exclusively to Turkish terrorist groups PKK and DHKP/C, terrorist groups in the North Caucasus, and the Lebanese group Hezbollah" [1].

Terrorist acts, most of the time, are the result of meticulously organized and premeditated plans prepared by various terrorist groups or organizations, which recruits, provides training and subsequently involves diverse people with conceptually pragmatic thinking. Some of these people do not know or fully realize the consequences of the actions they are drawn to participate in, as well as the character of the acts they perform, namely terrorist activities or acts.

There is a growing threat from those EU citizens who have travelled to conflict zones to engage directly in terrorist activities with the aim of benefiting from training, preparation and obtaining the necessary contacts to be able to commit terrorist acts upon returning to the territory of European states. This fact also implies the appearance of new terrorist groups in addition to those that already exist and operate. Additional to those mentioned instability in certain countries in the Middle East, from North Africa (Libya, Nigeria, Mali, etc.), and from Asia, directly affects security within the European Union.

Since terrorism is an undeniable danger that encompasses all aspects of social life, It is imperative that the competent forces in all structures of a democratic state focus their attention and effort to diminish, stop and liquidate the auxiliary components of terrorist acts, such as recruitment, training, preparation, mobilization of individuals who are members of terrorist groups, organizations or networks, and other persons who commit or refrain from committing any act for terrorist purposes.

In this regard, It is clear that the social danger that these facts manifest represents a real global threat, which significantly threatens the security and public order of any democratic state. Only through joint, well-organized and coordinated actions it is possible to counteract this scourge whose existence destabilizes states, nations and global regions.

Methods and materials applied. A set of empirical and theoretical research methods were applied to carry out this scientific study, which allowed the comparative study of the criminal legislation of some EU member states regarding criminal prosecution and criminal liability for committing the crime of recruiting, training, receiving training or providing other support for terrorist purposes. Analysis and synthesis methods, thanks to the fact that they are mutually complementary, provided the opportunity for the author of this study to focus on the analysis of the incriminating legal norms of the crime of recruiting, training, and receiving training or providing other support for terrorist purposes.

At the same time, some differences in the legislative system of the European countries were studied on ensuring public security and order in the context of carrying out support actions for terrorist purposes. The use of digital information sources contributed positively to the documentation of the research and obtaining relevant and updated information for the development of the study in question.

Discussions and results obtained. In the European Union's system of actions on preventing and combating terrorism, anti-terrorist legislation is top-notch. This does not imply the automatic and mandatory replacement of the provisions of the national law of the Member States. One of the purposes of developing common standards on the fight against terrorism is to ensure within the EU space uniform application of international legal norms regulating anti-terrorist activities.

The European Union's activity in developing international legal norms for the Euro-

pean security system in the field of combating terrorist threats is at the forefront, because one of the main objectives of the EU is to create an area of freedom, security and justice. The experience of some EU member states regarding the integration of European legislation in the field of preventing and combating terrorism, where the principle of collective problem solving is clearly expressed, occupies an important place in the system of global anti-terrorist cooperation and, as a result, requires comprehensive study and analysis.

In this sense, for the implementation of policies and strategies to combat terrorism, a field that is subject to research in this article, The European Union has created and empowered institutions such as: the European Commission (EC), Council of the European Union (CEU), Europol, Eurojust, EU Counter-Terrorism Coordinator (works within CEU), European Counter-Terrorism Centre (ECTC) etc. However, in the process of issuing, implementing and following up on a policy or in the development of EU legislation in the field of criminalization of terrorist actions and activities, the final decision is taken by each individual Member State. In other words, it appears that the EU has the role of coordinating the individual counter-terrorism strategies of the Member States, and to ensure their functioning within a common European framework, acting as the main cooperation forum. The same goes for each country's intelligence agencies.

Unfortunately, the deeper approach of EU legislation on the criminalization of terrorist activity became a priority after the events of September 11, 2001 (USA), the terrorist attacks of 2004 in Madrid (Spain), and those of 2005 in London (United Kingdom), as well the intensification of terrorist activity in EU countries during 2015-2016.

During the events listed above, at the level of EU legislation there were a number of political and legal acts regarding the fight against terrorist activities, but these were of a general nature and did not provide for some aspects and auxiliary components of terrorism, such as recruitment, training, preparation and mobilization. In this regard, some of the most important documents include:

– Action Plan on Combating Terrorism (2001);

– Declaration on solidarity against terrorism issued by the European Council (2004);

– Strategy to combat terrorist financing (2004);

– Counter-terrorism strategy (2005) [2].

Although initially, criticism arose against the EU institutions responsible for drafting legislative proposals on the effectiveness of European rules in criminal matters regarding the criminalization of acts of terrorism, considering them more responsible for the activity of numerous terrorist organizations than the source of possible solutions for effectively combating them. EU intervention in decision-making is limited because its relevant organizations operate on the basis of the assigned competences respecting *the principles of subsidiarity and proportionality*. As a result, the EU can only intervene in expressly delimited domains and to the extent that its action supplements the actions of the Member States [3, p.19].

The terrorist attacks in the preceding period have demonstrated that the responsibility for combating crime and defending security lies primarily with each individual Member State, and at the European level, the entire community must assume it. Thus, EU leaders issued a joint declaration to guide the work of the EU and Member States in taking specific measures focused on the following areas:

– Guaranteeing citizens' security;

– Preventing radicalization and protecting values;
– Cooperation with international partners.

In 2002, the European Union Framework Decision 2002/475/JHA on combating terrorism was adopted (Hereinafter – D/2002), which established common standards for all EU Member States regarding criminal liability for acts of terrorism, whether the terrorism was domestic nature or of international character. At that stage, the terrorist act was only recognized as a crime "committed intentionally by a person or group of persons against one or more EU Member States, institutions or citizens of these states in order to manifest a threat to them and to undermine or destroy the political, economic or social structures of the state" [5].

Subsequently, in order to respond proportionately to new challenges in the field of terrorism, The European Commission has proposed for approval to the European Parliament and the Council on combating terrorism, replacement of the Framework Decision 2002/475/JHA with appropriate criminal law provisions and instruments, namely, the application at European level of Framework Decision 2008/919/JHA (Hereinafter – D/2008).

The completion of the provisions of Decision/2002 was necessary because it did not provide for the obligation to criminalize behaviors such as: broadcasting messages of public provocation that did not actually incite a specific person to commit a terrorist crime; the dissemination of messages that encourage individuals to become terrorists without making reference to a specific terrorist crime; or the dissemination of knowledge on terrorism on the internet that is not intended to support the activities of a specific terrorist group.

In this regard, the 2008 Framework Decision was implemented as a priority in the European Agenda on the modernisation of the EU framework in the field of security and tackling terrorism, through which new offenses were introduced consisting of: "*The public challenge of committing a crime of terrorism*"; "*Recruitment for terrorism*", and "*Preparation for terrorism*". At the same time, Member States were obliged to ensure the sanction of complicity in committing new crimes. Sanctioning attempts to recruit and prepare for terrorism being optional [6].

Article 2 of the Decision/2008 mentions that Member States are not obliged to take measures contrary to the fundamental principles regarding the freedom of expression. Art.3 para.(1) D/2008 reminds of the need for Member States to ensure that incrimination is proportional to the legitimate objectives pursued and necessary in a democratic society, and any form of discriminatory treatment is excluded [6]. These provisions reflect the guarantees provided in Art.12 of the Council of Europe Convention on Terrorism Prevention [5]. In addition, new offenses are not meant to include the dissemination of materials for scientific or academic purposes, or for information or the expression of polemical opinions in a public debate on sensitive political issues, as they are guaranteed by the right to freedom of expression.

In turn, the United Nations invited member states to analyze possible ways and means of countering recruitment, training, incitement to commit terrorist acts, as well as terrorist manifestations on the Internet.

As a result, most EU Member States have adopted the national legislative framework to the European rules on the criminalization of recruitment and training for terrorism, even if, in some cases, the scope of the provisions is more limited than it should be (in

the case of: Denmark, Estonia, Finland, Italy, Latvia, Malta, United Kingdom). Some states have transposed the provisions of the 2008 European Commission Decision by amending or supplementing the Criminal Code at national level, while a smaller number have adopted or amended special acts on combating terrorism (ex: Ireland, Cyprus, Portugal, Romania, Sweden), or were based on other acts, such as the Press Act of 1881, in the case of France. Only in 2011, countries such as Austria, Bulgaria, the Czech Republic, Poland and Portugal adopted new, more explicit legislative measures regarding the criminalization of recruitment and preparation for terrorism, and in 2012 their example was followed by France, Luxembourg, Romania, and in 2013, by Belgium, Croatia, Lithuania and Hungary. At that time, only Ireland and Greece had not adopted the necessary legislation to prevent and repress terrorism [6].

Recruitment for terrorism is defined in Art.3 paragraph (1) letter (b) of D/2022, as "to solicit another person to commit one of the offences listed in Art. 1 para. (1) lett. (a)-(h) or in Art.2 para.(2)". A large number of EU Member States have confirmed the framework provisions and have adopted specific provisions at national level that criminalise the act of requesting another person to commit a terrorist offence and to participate in the activities of a terrorist group. Recruitment to commit terrorist crimes (within the meaning of Article 1 of the D/2002) and recruitment into a terrorist group (within the meaning of Art.2 of the D/2002), are part of the same provision in almost half of the Member States. Other Member States (Austria, France, Germany, United Kingdom) have separate provisions for both forms of recruitment. In some Member States, only recruitment to commit terrorist offences appears to be sanctioned, not recruitment to participate in the activities of a terrorist group, as defined in Art.2 para.(2) of the D/2002 (Bulgaria, Estonia, Ireland, Malta, Portugal, Romania, Slovakia, Sweden) [6].

Among the Member States that have introduced new specific provisions to regulate the new European legislative approaches in the field of criminalisation of terrorist crimes, few used the term "request" in their definition of recruitment (Croatia, Luxembourg, Slovakia "*to ask*"; Malta: "to request" or "to recruit"). Most Member States seem to have chosen the term "to recruit" (Belgium, Bulgaria, Germany, Estonia, Ireland, Italy, Spain, Latvia, Lithuania; Portugal, Romania, Slovenia: "enrollment") or other terms such as "aiming to induce" (Sweden), "incitement" and "provocation" (Netherlands), "instigation" (Hungary) or "encouragement" (CYPRUS). In some Member States, it is argued that the term "to recruit" would require some kind of plan or minimum institutional framework that the recruited person should respect (Portugal). This may raise doubts as to whether national provisions effectively criminalise encouraging an "isolated individual" to commit terrorist acts. At the same time, a potential risk is that the provisions regarding providing support to terrorist organizations or participating in a conspiracy, not to include the recruitment of "isolated individuals", a fact which would also be a cause for concern if no other legal norm criminalizes this illicit action. Recourse to general provisions may also raise doubts about the effective criminalization of types of predicate criminal behavior. This will depend on the interpretation and application of concepts such as facilitation or creation of preparatory acts for the commission of terrorist crimes [6].

Moreover, French criminal law deals in more detail with the sanctioning of criminal actions regarding recruitment for terrorist purposes. In this sense, the French Code of Criminal Procedure defines the notion of recruitment as "*offering gifts and other benefits to threaten or pressure a person to commit a terrorist offence*". However, the given rule may

unduly restrict the scope of the provision, in the sense that it could not apply in cases where a person is encouraged in other ways to commit terrorist acts.

In some cases (e.g. Italy), recruitment does not appear to include all the offences listed in Art.1 para.(1) let. a)-h) of the Decision 2002. Other Member States criminalize not only recruitment to commit a terrorist offence, but also recruitment to: "facilitate" (Denmark), "to prepare" (Finland) or "to participate" (Lithuania, Slovenia, Slovakia) in the crime of terrorism. At the same time, Danish legislation extends the definition of recruitment to include terrorist financing, and also criminalizes the fact that a person agrees to be recruited. In Finland, anyone who is aware that their activity promotes terrorist crimes can be sanctioned. Only Cyprus and Luxembourg are among the states that explicitly clarify that recruitment is punishable even if the person has not consented to commit the crime of terrorism.

In the case of Romania, which is of greater interest to us given the fact that we are in the immediate vicinity, the Romanian legislator also provided for the criminalization of provocation to carry out preparatory actions or incitement to prepare or be prepared to commit terrorist crimes. To respond effectively to new threats in terms of organized crime and terrorism, whose investigation falls within the area of competence of the Directorate for the Investigation of Organized Crime and Terrorism (Romanian abbreviated – DIICOT), the Romanian executive approved Emergency Ordinance No.78/2016 for the organization and operation of DIICOT [7], as well as proposed the amendment and completion of Law No. 535/2004 on the prevention and combating of terrorism [8], with the aim of harmonizing national provisions with those of the Additional Protocol to the Council of Europe Convention on the Prevention of Terrorism (The Riga Protocol, signed by Romania in March 2016) and those of UN Security Council Resolution No. 2178/2014.

Also, Law No.535/2004 introduced new crimes, such as:

1) The act of recruiting a person to commit one of the acts provided for in Art.32 para.(1) and (3) and Art.33;

2) the act of inciting the public, verbally, in writing or by any other means, to commit crimes provided for by this law. If the act provided for in paragraph (1) is committed by a public official, the punishment is more severe, but without exceeding the penalty provided by law for the crime instigated. If public incitement resulted in the commission of the crime to which it was instigated, the punishment is that provided by law for that crime;

3) promoting a message through propaganda carried out by any means, in public, with the intention of instigating the commission of one of the crimes listed in Art.32 para.(1) and (3) and Art.33 para.(1) and para. (2) letter e), regardless of whether or not the message directly supports terrorism or whether or not the crimes in question have been committed. Attempting the acts provided for in Art. 32, 33 and 33^1 is punishable. The production or procurement of means or instruments, as well as taking measures to commit these crimes, is also considered an attempt [8, Art.32, 33, 33^1].

Government Emergency Ordinance no. 78/2016 introduced Art. 351 into Law no. 535/2004, which criminalizes a new act: "The movement of a person from the territory of the state of which he is a citizen or from the territory of which he has his domicile or residence, to or on the territory of a state other than that of which he is a citizen or resident, for the purpose of committing, planning or preparing acts of terrorism or participating in them, or for providing or receiving training or preparation for the commission of an act of terrorism or for supporting, in any way, a terrorist entity shall be punished with impris-

onment from 5 to 12 years, and the attempted crime shall be punished [8].

In 2014, the Council of Europe adopted the Strategy on Combating Radicalisation and Recruitment of Persons for Terrorist Purposes. [9], this has been revised several times given the constant evolution of the ways in which terrorist groups act to recruit and mobilize new members, in particular, the phenomenon of people acting alone, of foreign fighters in armed conflict zones, as well as the use of social media platforms by terrorists. In this case, a possible risk or major problem that we identify is the recruitment of individuals for the purpose of training and obtaining knowledge or practical skills/ military experience for subsequent involvement in the commission or preparation of terrorist crimes. When persons participating in these armed conflict zones return to their home states, most participants are more seriously affected by the extreme violence they were exposed to and show psychological trauma, starting from post-traumatic stress and adaptation difficulties, to predispositions towards antisocial behaviors or even radicalization by terrorist groups. As a result, we consider that a primary measure in preventing and countering such risks as deviant behavior or a failed reintegration of combatants or civilians returning from conflict zones is prophylaxis. This measure can contribute to eliminating the processes of further radicalization of vulnerable or psychologically traumatized individuals, as well as supporting those already influenced by extremist ideologies.

Previous lessons regarding terrorism have been learned by EU states, so that the new strategies for combating terrorism and radicalization are based on four main objectives, being well defined: *prevention*, *protection*, *prosecution and liability*. These serve both as priorities (pillars) of community security through:

a) Identifying the methods, propaganda and tools used by terrorists;

b) protection of citizens and infrastructure (securing external borders; improving transport security), reducing vulnerability to terrorist attacks;

c) pursuing terrorists across borders, while respecting human rights and international law by improving cooperation and information exchange between police and judicial authorities;

d) preparing, managing and minimizing the consequences of an attack, as well as a pillar of civil society by facilitating the reintegration of people returning from areas of armed conflict.

However, the measures taken by the EU between 2002 and 2014 to prevent, combat and reduce the risk of the spread of terrorist activities, did not have the expected effect. Following a series of terrorist attacks starting in 2015 (Paris and Brussels), The European Commission had to mobilize quickly to adopt the "PNR" Directive which allowed the use of data from *Register of passenger names for the prosecution of terrorist and serious crimes* [10]. As with other previously adopted normative acts, criticism has arisen regarding the insufficient guarantees regarding the protection of privacy [11].

In November 2020, following terrorist attacks in France, Germany and Austria, EU home affairs ministers agreed to further step up their efforts to combat terrorism, without compromising the EU's common values, such as democracy, justice and freedom of expression, but these aspects will be the subject of a future research study of a new article.

Conclusions and recommendations. Summarizing the ideas and opinions listed in this study regarding the criminalization of the acts provided for in Art. 2791 of the Criminal Code of the Republic of Moldova by the legislation of the EU member states and making an analysis regarding the consistency of national norms with European ones, we

can affirm that the local authorities have made and are making efforts to harmonize and strengthen national legislation in the field of national security by preventing and combating terrorism and cross-border crimes, to the European Union's community one.

As an argument we can mention that in February of the year 2025, General Inspectorate of Border Police, for the first time created the Passenger Information Unit (Romanian abbreviated – UIP), a subdivision that will have the mission of collecting, storing and processing data from the Passenger Name Record (PNR), these being requested from the airline companies. More precisely, the Republic of Moldova is taking an important, but unfortunately delayed, step towards securing the state border, this being deduced from the context in which, over the last 5 years, at Chisinau International Airport (which is one of the most important state border crossing points, with a constantly growing passenger flow), there were several incidents including armed clashes resulting in human deaths, some involving Wagner mercenaries [12, 13, 14]. It is gratifying that this unit will operate in full compliance with international standards on personal data protection, respecting the balance between security and freedom. But, this aspect must be approached carefully, as it is a very delicate one, and this is because the legal and operational arsenal that the EU has equipped itself with over the decades has been largely denounced by human rights organizations.

In particular, the right to privacy is practically neglected in the context of combating terrorism. We understand that the EU's goal is to allow for greater protection of its citizens, especially after the failure in managing the refugee crisis that contributed to the movement of members of terrorist or extremist groups on the territory of the European community. This comes along with the great limitation of fundamental human principles and rights, the rights of citizens of good faith being equally affected.

Finally, we reiterate that the current trend and dimension of terrorism urgently require the permanent design of new means and mechanisms to counter, improve and consolidate both national and international legislation on this aspect. It is clear that terrorist activities and acts, regardless of the state or region addressed, have no limits or borders. This fact can and should be deduced from the experience of other countries which has demonstrated that the use of modern prevention mechanisms leads to improved border control, to identify risks more quickly and increase the level of security for citizens.

It should not be forgotten that maintaining and strengthening cooperation between law enforcement bodies, bring real support to the officers of these institutions, by providing direct and fast access to relevant information exactly when needed. It is not for nothing that the main pillars on which the EU strategy is based are the prevention, protection, prosecution and response to terrorist acts.

Terrorism really affects the security of citizens, but abandoning democracy and human rights to respond to the acts of radicals, guided by the ideology of terror, would be a huge mistake.

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SECTION II. PUBLIC LAW
SECŢIUNEA II. DREPT PUBLIC

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EMERGING TECHNOLOGIES AND THEIR IMPACT ON THE SECURITY OF WOMEN'S RIGHTS

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Summary

In the last decade, emerging technologies such as kinetic intelligence and artificial intelligence have profoundly influenced multiple fields. These innovations have brought both benefits and challenges, especially in terms of women's safety and rights. In the online environment, such technologies can help prevent violence and crime through advanced protection systems. To ensure a balance between the benefits of technology and the associated risks, collaboration between governments, international organizations and the private sector is necessary. Artificial intelligence and kinetic intelligence must be used responsibly, with clear oversight and transparency mechanisms.

It is very important that public policies are constantly adapted to prevent the misuse of these technologies. Governments, international institutions and technology companies must cooperate to establish an adequate legislative framework that protects women's rights and combats environmental risks.

Keywords: emerging technologies, artificial intelligence, kinetic intelligence, violence, public policies, innovations.

Introduction. Over the past decade, the development of advanced technologies, such as kinetic intelligence and artificial intelligence (AI), has brought both significant opportunities in various fields and major risks to the rights and safety of individuals, especially women. In the cyber context, these technologies can help protect women by implementing more advanced systems to prevent violence or online crimes, but at the same time, they can deepen their vulnerabilities.

Methods and materials applied. To investigate the proposed theme, multiple research methods were used: the logical analysis method, which is based on the use of logical reasoning for a rigorous interpretation of legal norms, thus facilitating the argumentation of theses, findings and scientific conclusions; the critical analysis method, which allowed the evaluation and reconsideration of existing theoretical approaches, identifying both their strengths and limitations; the empirical method, which involves qualitative and quantitative research, aimed at evaluating how women perceive and interact with advanced technologies, in order to more deeply understand their impact on them.

Discussions and results obtained. The rapid development of emerging technologies, such as artificial intelligence (AI) and kinetic intelligence, has generated new challenges and risks for women's fundamental rights in the digital environment. These technologies, which have begun to have a significant impact on society and the economy, are associated with both opportunities and dangers, especially with regard to the protection of women from cyber violence, discrimination and online abuse.

Artificial intelligence and kinetic intelligence are technologies that can influence various areas, from data processing and personalization of online user experiences to monitoring and controlling human behavior in digital space. Their impact on women's rights can be positive or negative, depending on how these technologies are regulated and implemented.

Kinetic intelligence and artificial intelligence are emerging technologies that, in addition to their applications in areas such as cybersecurity, medicine or education, are having a significant impact on the way women interact with the digital environment. Kinetic intelligence, which refers to the use of real-time data to predict and prevent events, and AI, with its ability to learn from experience and analyze large volumes of data, can be used to identify and combat digital domestic violence, cyberbullying and other forms of online abuse. However, these technologies can also create additional risks, such as privacy breaches, unwanted monitoring and gender discrimination.

From the literature reviewed, we deduce that artificial intelligence refers to the development of computer systems that can learn, analyze, and respond autonomously to environmental stimuli, mimic human cognitive processes, and make decisions. In the digital environment, AI is used for service automation, personalized recommendations, user behavior analysis, facial recognition, and many other applications. And kinetic intelligence refers to technology that uses data and the physical movement of the human body to create interactive experiences and improve the way people interact with devices and technologies. In the digital field, kinetic intelligence can be used to track the physical movements of users, contributing to the development of interactive applications, video games, or augmented and virtual reality technologies.

Although there is no exhaustive regulation of the use of kinetic intelligence and AI in the context of women's protection, the national legislation of the Republic of Moldova includes essential norms that can directly influence this area. Below we will address the most important acts in which important provisions are enshrined that guarantee the protection of women's rights in relation to the development of emerging technologies.

First, the protection of women is at the heart of the constitutional principles of the Republic of Moldova. Thus, Article 16 of the Constitution of the Republic of Moldova "guarantees the right to equality before the law and prohibits discrimination on the basis of sex", and Article 28 "protects the right to intimate, family and private life" [1]. These fundamental rights are essential in the context of the use of AI and kinetic intelligence, as they guarantee women protection against invasion of their privacy or online harassment.

Another national normative act is Law No.45-XV of March 1, 2007 on preventing and combating violence against women and domestic violence, which regulates measures to protect women victims of domestic violence [6]. In the cyber context, violence can include abuses such as unauthorized monitoring, distribution of intimate images or online harassment [12]. Kinetic intelligence and AI technologies could contribute to preventing and combating them, providing a more efficient framework for the rapid identification of

abusive behaviors.

Another national normative act would be the Criminal Code of the Republic of Moldova, which is also covered by norms on cybercrimes, such as illegal access to the computer system (Art.134[25]), harassment (Art.173) and violation of the right to secrecy of correspondence (Art.178), can be applied in combating the risks brought by emerging technologies. Protective measures can be amplified by implementing cyber tools that help authorities to identify victims and criminals more quickly.

Also, even though currently, the legislation of the Republic of Moldova does not expressly define cyber violence or online harassment. It is imperative that these notions are clearly regulated in the Criminal Code and in the Law on Preventing and Combating Violence against Women and Domestic Violence. This would include acts such as unauthorized stalking of individuals on social networks, distribution of intimate images without consent "revenge porn", online harassing messages and cyber-attacks targeting victims based on sex or gender. These forms of abuse are particularly harmful to women and must be firmly sanctioned within the framework of national legislation.

Law No.195 of 25.07.2024 on the protection of personal data is essential in the context of kinetic intelligence and AI, as these technologies involve the processing of large amounts of data. The law guarantees the protection of women's personal data in the online environment and establishes clear rules on their collection, processing and storage [7].

Violence is a serious violation of fundamental human rights and a direct result of gender inequality in the Republic of Moldova. According to estimates, over 63% of women and girls aged 15 to 65 have been victims of some form of violence at least once in their lives [13].

International data indicate that although 38% of women have experienced online violence, in 78% of the cases they were unaware of the appropriate channels or institutional mechanisms for reporting such incidents [14]. An even more worrying problem is that, annually, in the Republic of Moldova, approximately 40 women lose their lives due to acts of violence suffered within the family. This reality is amplified by the crises that the society of the Republic of Moldova has been facing in recent years, including the Covid-19 pandemic, the economic and energy crisis, but also the armed conflict in neighboring countries, accompanied by a large wave of refugees. To date, the Republic of Moldova has received approximately 110,000 refugees, of whom 60% are women, 46% children and 21% elderly [8]. All these factors have considerably worsened the situation of women, leading to an intensification of violence against them, due to difficulties in accessing support services, shelters and justice.

The Republic of Moldova, as a member state of several international organizations, has signed numerous international conventions and treaties through which it has assumed the obligation to implement effective measures, including for the protection of women's rights against cyber risks and digital violence. We propose to address the most important international acts that require the creation of various measures to prevent and combat violence, including through the lens of emerging technologies.

The Republic of Moldova is a signatory to numerous international instruments, among which the *Council of Europe Convention on preventing and combating violence against women and domestic violence* (Istanbul Convention) is of particular relevance in the analyzed topic. The provisions of the Convention require states to adopt measures to prevent and combat psychological violence that may be cyber, including harassment and digital abuse. In this context, developments in the field of kinetic intelligence and AI are

essential for monitoring and preventing numerous crimes. In the Republic of Moldova, the attention paid to issues related to violence against women and domestic violence is clearly reflected in the firm commitment assumed by ratifying the Council of Europe Convention on preventing and combating violence against women and domestic violence.

As of May 1, 2022, the Council of Europe Convention on preventing and combating violence against women and domestic violence entered into force for the Republic of Moldova, with this moment, our country was subject to the monitoring procedure by the Group of Experts on Action against Violence against Women and Domestic Violence (hereinafter referred to as GREVIO), regarding the implementation of the provisions of the Convention. According to Art.68-69 of the Istanbul Convention, GREVIO has the right to carry out evaluations and analyze reports of signatory states on the measures taken to implement the Convention [2]. Based on the information collected, including from regional and international organizations in relevant fields, GREVIO may issue, when necessary, general recommendations for the implementation of the provisions of the Convention.

In this regard, when developing General Recommendation No.1, GREVIO was based on the provisions of the *Council of Europe Convention on Cybercrime* (Budapest Convention), in particular as regards legal and procedural aspects, including the investigation of crimes committed through computer systems [4]. In adopting this recommendation, GREVIO also took into account other international documents and practices that recognise digital violence against women as a violation of the right to privacy. GREVIO considers that, in recent times, the experiences of women and girls who have been victims of gender-based violence have been increasingly influenced by technology, in particular with the use of various emerging technologies. Violence against women committed online or through the use of various technologies has a serious impact on victims [5]. This is made even more intense by the large number of aggressors involved in some cases, the possibility of rapid and widespread dissemination of harmful content, and the fact that hateful images or messages may remain available almost permanently. Thus, violence against women in the digital environment seriously affects their lives, physical and psychological health, safety and reputation. It also has negative consequences on women's rights to participate freely in the online space.

The content of GREVIO General Recommendation No.1 uses the expression „*digital dimension of violence against women*" to show that online violence has the same causes and origins as real-life psychological, sexual, economic or physical violence. Digital gender-based violence can be a continuation or a beginning of physical and sexual violence, stalking and harassment. It can be used to punish, silence, humiliate or traumatize the victim. Often, it is a form of control and manipulation exercised by current or former partners, which leads to increased fear, anxiety and isolation of the victim from friends and family [11].

It is noteworthy that, in General Recommendation No.1, GREVIO recognizes digital violence against women as a specific form of violence, but one that is part of the broader phenomenon of violence against women, without being separate from it. Digital violence against women includes various forms of abuse, such as the distribution of images or videos without permission, threats and coercion (including rape), intimidation, online sexual harassment, online stalking, identity theft, psychological abuse and economic harm through digital means. All of these unlawful behaviors are included in the definition of violence against women set out in Article 3 of the Istanbul Convention.

According to the Istanbul Convention, Art.3 "Violence against women" is considered a violation of human rights and a form of discrimination against women. It includes all acts of gender-based violence that result in, or result in, physical, sexual, psychological or economic harm or suffering to women, including threats of such acts, coercion or deprivation of liberty, whether occurring in public or in private life [2].

"Domestic violence" refers to all acts of physical, sexual, psychological or economic violence that occur within the family or household, between former or current spouses or partners, even if the aggressor lives or has lived with the victim in the same house. These provisions highlight how fragile women's rights are in the context of the use of emerging technologies.

Based on the content of the Convention, signatory states must take the necessary actions to ensure that they do everything in their power to prevent, investigate, punish and provide fair compensation for the acts of violence mentioned in the Convention.

Another important instrument ratified by the Republic of Moldova is the *United Nations Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW), which emphasizes the importance of protecting women from violence and abuse. Following the ratification of CEDAW and in the context of international obligations, the Republic of Moldova has implemented a normative framework aimed at protecting women from all forms of discrimination, including those targeting digital violence and online harassment.

The Republic of Moldova, being a party to the 1994 CEDAW Convention, was required to create a national legal framework to ensure women's rights and eliminate gender discrimination in all areas, including the digital environment. CEDAW defines "discrimination against women and obliges signatory states to adopt measures to protect and prevent gender-based violence, including cyber violence and online harassment, which disproportionately affects women in the digital space" [3]. Violence against women in the digital environment has serious consequences for their lives, affecting their physical and psychological health, personal safety and reputation. It also limits the exercise of women's rights to actively participate online. Women are disproportionately targeted by abuse and hate speech online, leading many of them to avoid engaging in public debates or to self-censor their opinions [15]. Thus, digital violence against women and girls contributes to reducing the diversity of voices online, often affecting human rights defenders, journalists, bloggers, politicians, opinion leaders and other active advocates.

Although the Republic of Moldova is not a Member State of the European Union (EU), since 2014 the country has taken significant steps towards a closer partnership with the European Union, by signing the Association Agreement (AA). This agreement represents an important framework for cooperation and integration between the Republic of Moldova and the European Union, being a legal instrument governing bilateral relations between the two parties. The signing of this agreement was a crucial moment for the Republic of Moldova, as it marked a firm commitment of the country to approximate national legislation to European Union standards, especially in key areas such as governance, human rights, trade, education and environmental protection. One of the most important components of this agreement concerns the alignment of national legislation with European regulations, including with regard to the protection of personal data.

In the context of modern technology and the ever-increasing use of the internet and digital platforms, the protection of personal data in the cyber environment is becom-

ing a major concern, especially for vulnerable groups such as women. Digital violence and online harassment are emerging forms of abuse that affect a significant number of women, and the protection of personal data in this context becomes essential for preventing and combating these types of aggression.

It is worth noting that a number of European Union states have implemented more advanced regulations regarding the protection of women's rights in the digital environment, especially in the face of risks generated by AI and kinetic intelligence, such as:

Romanian legislation is much more advanced, considering the integration of European data protection regulations (GDPR) and the protection of women against digital violence. Romania has also transposed the Istanbul Convention into national legislation, which includes measures to prevent online violence and protect women from digital abuse [9]. In addition, the Romanian authorities have implemented educational campaigns and measures to prevent cyberbullying. Both Romania and the Republic of Moldova face similar challenges in protecting women from cyber risks generated by the development of emerging technologies, such as kinetic intelligence and artificial intelligence. Although both countries are parties to relevant international treaties and have national regulations that protect women's rights in the digital environment, there are significant differences in the implementation and enforcement of legislation, as well as in the level of development of cyber infrastructure and strategies to prevent online abuse.

Sweden and *Finland* are considered leading countries in implementing technological regulations and protecting women's rights in the digital environment. Sweden, for example, has introduced strict regulations for the protection of personal data, and Finland has a well-defined legislative framework for combating digital violence, including the phenomenon of distributing intimate materials without the victim's consent.

In the *United Kingdom*, legislative measures have been adopted to protect women from cyberbullying and digital violence. The Online Abuse Act was introduced to penalize cyberbullying and the unauthorized distribution of intimate material.

If we talk about the Republic of Moldova, we will state that women's rights in the digital environment are less regulated than in many other European countries. Although there are general legal regulations on the protection of personal data and domestic violence, the national legislation does not specifically include measures to protect women from cyber abuse [10]. In addition, emerging technologies are not yet specifically regulated within the national legislation, which makes women vulnerable to cyber risks and abuse. Despite progress, the Republic of Moldova faces challenges in implementing legislation and developing the necessary infrastructure to protect women from cyber risks.

Although the authorities have made important steps, there is still a significant gap between legal regulations and their implementation in practice. Limited resources and the lack of an adequate technological framework to combat cybercrime represent major obstacles. It is important for national authorities to implement educational programs that teach women how to protect themselves online, inform them about their rights in the face of digital abuse, and provide them with quick solutions in case of harassment or cyber-attacks. These campaigns should target both digital education and the protection of personal data and safety in the use of social networks.

The development of AI and kinetic intelligence can also have a major impact on women, as they are frequently victims of cyber violence and online harassment. These technologies can be used to increase the effectiveness of cyber-attacks or to spy on

women's behavior in the digital environment. In this context, we can identify several *risks of abuse*, including:

Artificial intelligence can be used to create algorithms that distribute harassing messages or images on social media platforms, and kinetic intelligence can be used to monitor and track a victim's physical movements, which can lead to an advanced form of digital harassment;

AI can be used to create manipulated images or videos (deepfake), and kinetic intelligence can contribute to spying on women's intimate activities, thus increasing the risks of their uncontrolled exposure;

Artificial intelligence, when not properly regulated, can encourage gender discrimination in employee selection, access to credit, or even online social interactions. Algorithms can reflect social prejudices and discriminate against women based on stereotypes, which could restrict their access to economic and social opportunities.

To combat the risks of abuse that may occur, it would be good to have created some protection mechanisms for victims of cyber violence, including the following *recommendations*:

Establish an online support system for victims of cyberbullying – working with the technology sector to implement advanced technologies for the purpose of preventing and combating digital violence, and for authorities to be prepared to use these tools effectively, providing training and coaching for public authority employees and law enforcement institutions to better understand the risks of digital violence and how advanced technologies can be used to protect women. It is essential that women who are victims of cyberbullying can quickly turn to a support system. This system should include emergency telephone lines, online chat with women's protection specialists, legal and psychological counseling, as well as immediate protection against cyberattacks. There should also be quick options to block fake accounts or websites that share intimate information without the victim's consent;

Rapid legal protection measures for victims of cyberbullying – another important aspect would be the introduction of specific protection orders for cyberbullying cases, allowing victims to quickly obtain injunctions against offenders. These measures should be more accessible and faster than traditional procedures, given the immediate nature of cyberbullying risks;

Stronger penalties for cyberbullying and abuse – introducing stronger penalties for cyberbullying, non-consensual sharing of intimate material, online identity theft and cyber-attacks affecting women would be welcome. Review and update national legislation to include explicit forms of digital violence and online bullying within existing regulations, in particular in the Law on Preventing and Combating Violence against Women and Domestic Violence and the Criminal Code;

Create a legislative framework for regulating online platforms – by adopting regulations that oblige online platforms and social networks to actively collaborate in identifying and blocking abusive behavior. In addition, platforms should be responsible for protecting users' personal data and preventing its use for abusive purposes, such as sharing intimate images without consent or creating fake profiles for harassment. Strengthen personal data protection and introduce additional measures to prevent the illegal sharing of intimate images and protect women's privacy in the digital environment.

It is essential that all institutions, mainly the police, courts and other relevant insti-

tutions, receive specialized training in the field of cyber violence and understand the impact of these forms of abuse on women. Specialized teams should also be created within public order structures to deal with cases of digital violence and the protection of women online.

Conclusions. In conclusion, the development of artificial intelligence and kinetic intelligence represents both an opportunity and a risk for women's rights in the digital environment. While these technologies can help protect women's rights and prevent online abuse, they can also amplify the risks of cyberbullying, digital violence, or even discrimination.

It is important for the authorities to adopt specific regulations that respond to the challenges posed by emerging technologies. These regulations should include the protection of women from cyber harassment, data protection measures and the prevention of algorithmic discrimination. It is also important for the Republic of Moldova to collaborate with other European states to learn from good practices and implement effective policies in this area.

The evolution of emerging technologies can address some of the biggest challenges in protecting women in cyberspace. However, to ensure adequate protection, the national legislation of the Republic of Moldova needs to be strengthened and continuously adapted to new technological realities. Artificial intelligence and algorithms can perpetuate or even worsen gender inequalities, and women can become victims of automated discrimination, for example in the online recruitment process or in access to services. The use of artificial intelligence algorithms should be regulated to prevent these practices and ensure that women are not subject to automated prejudices in the digital environment.

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THE STRUCTURE OF THE ADMINISTRATIVE AND LEGAL STATUS OF REFUGEES

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Summary

The article provides a comprehensive analysis of the structure of the administrative-legal status of refugees in the Republic of Moldova, in light of recent migratory crises, particularly the one caused by the armed conflict in Ukraine. The author emphasizes the need to redefine and strengthen this legal status through the lens of fundamental human rights, Moldova's international obligations, and the demands of a democratic and effective public administration. The article highlights the complexity of the refugee status as a legal institution, composed of interrelated components: rights, obligations, legal guarantees, administrative relationships, citizenship, and legal responsibility. The study also examines the challenges faced in the integration process of refugees and advocates for a balanced and systemic approach to their protection. The research findings are based on legal, doctrinal, and comparative analysis and include concrete proposals for improving the national legal framework on refugee protection.

Keywords: legal status; refugee; fundamental rights; administrative obligations; international protection; Republic of Moldova.

Introduction. The refugee phenomenon is one of the most prominent legal, political and humanitarian challenges of the contemporary world. In the regional context marked by geopolitical instability, armed conflicts and social crises, including the one triggered by the Russian military aggression against Ukraine starting with 24 February 2022, the Republic of Moldova faced an unprecedented influx of forcibly displaced persons. This reality requires a reconsideration of the legal and administrative framework governing the protection and integration of refugees in the host state, as well as a rigorous analysis of the content and structure of their administrative and legal status.

The actuality and importance of the topic is determined by the need to clearly delineate the features of this status, to define its legal content and to identify the mechanisms that guarantee the effective exercise of the rights and obligations by refugees. Given that international protection has evolved from a simple substitution of diplomatic protection offered by the state of origin to a strengthened regime of fundamental rights, a more in-depth scientific approach is needed to highlight the correlation between the principles of international law, the internal rules of the Republic of Moldova and the administrative

realities in the field of asylum and migration.

This article aims to contribute to the theoretical substantiation of the concept of the administrative and legal status of refugees, through a systemic and structural approach, which involves the analysis of its constituent elements: rights, obligations, guarantees, legal liability, citizenship and general legal relationships. At the same time, special attention shall be given to national norms, such as the Law on Asylum in the Republic of Moldova, Government Decision no. 808/2022 on the management of the migration flow and the international commitments assumed by the Moldovan state through the ratified treaties and conventions.

The methodology used in the research includes normative and legal analysis, comparative method, as well as doctrinal and jurisprudential analysis, in order to provide a complete and current picture of the legal regime of refugees. The study is based on the works of reputed authors from the local and international legal doctrine, as well as on relevant programmatic and statistical documents, in order to substantiate the conclusions and proposals formulated.

Discussions and results obtained. This research aims not only at the conceptual clarification of the legal and administrative status of refugees, but also at the formulation of proposals to improve domestic legislation and strengthening the administrative capacity to protect these people in a vulnerable situation, in accordance with the principles of the rule of law and international human rights law.

"Taking into account the constitutional guarantees of the state in ensuring the fundamental rights and freedoms of refugees in the Republic of Moldova, taking into account their special status as socially vulnerable persons, and then their protection by the host state, the legal and administrative status of refugees and the structure of this status still require scientific research. The importance of the structural analysis of the administrative and legal status of refugees lies in the fact that the theoretical division of this concept into its constituent elements makes it possible to identify its characteristic aspects, the essence and mechanism of the exercise of rights, freedoms and duties" [5].

The relevance of the study is also largely confirmed by the interest in this issue among foreign and domestic scientists. At various times, scientists, both from the country and abroad, have contributed to studying the refugee problem, such as: Smochină AI, Goriuc S, Cauia A, Chirtoacă N, Serbenco E, Balan O, Starașciuc R, G. Goodwin Hill, J. Yeger, O. Klinova, D. McNamara, K. Nguyen, D. Patrick, V. Potapov, D. Horekens, Vergati C N, exploring the status of the refugee. In recent years, there is an increasing need to study and establish the legal status of refugees in the Republic of Moldova.

In the process of implementing a normative act, the analysis of the impact on the status of individual elements allows the evaluation of the effectiveness of the influence on public relations. This approach facilitates the identification of the positive and negative aspects of this influence, thus creating the necessary basis for the continuous improvement of the national legislation in the field of refugees' rights, freedoms and responsibilities in the Republic of Moldova.

"Prior to the adoption of the Convention on the Status of Refugees, the model of international action in the field was developed by the League of Nations and led to the adoption of a number of international agreements for their benefit. The existing definitions in these instruments related each category of refugees to the country of origin, to the territory they had left and to the lack of diplomatic protection granted by the country

of origin. In these circumstances, refugees could be easily classified, the situations arising in practice leaving little room for interpretation, without posing major problems" [3].

The intervention of the international community in such matters was unimaginable, as it would have been perceived as a violation of that sovereignty. In situations where a person's rights were violated or denied by the state in whose territory he was staying, but which was not his state of citizenship, the country of origin could intervene by offering him diplomatic or consular protection.

"The refugee crisis at global level, along with the development of international legal norms after World War II, materialized mainly by the creation of the United Nations High Commissioner for Refugees (UNHCR) and the adoption of the 1951 Convention, marked a transformation of the concept of international protection. It has evolved from an alternative solution for diplomatic and consular protection to a much broader notion, dedicated to the protection of fundamental human rights. By strengthening this system, the individual has gained formal recognition of the right to exercise these prerogatives" [3].

The inability or refusal of the state of origin to fulfill its obligation to guarantee respect for human rights has become a matter of international interest, a global responsibility and, at the same time, a legitimate reason for humanitarian intervention. "According to the 1951 UN Convention, the refugee is the person who was thus considered under the Arrangements of 12 May 1926 and 30 June 1928 or under the Conventions of 28 October 1933, 10 February 1938 and the Protocol of 14 September 1939, or as a result of the application of the Constitution of the International Refugee Organization" [1, p.84.].

"The concept of the legal and administrative status of refugees includes a set of characteristic and at the same time different features that are difficult to capture in a short definition" [7].

The legal and administrative status of refugees as a complex institution has its own legal structure. From the name itself "legal structure", it results that the administrative and legal status has its own complex structure, consisting of corresponding elements (components) that fill the specified concept with material content.

"It is certain that the constituent elements of the structure derive from the definitions of "the legal and administrative status of refugees". The content of the legal status is not just a concept, but a model that reflects the complexity of the structural construction of the legal status of the person" [6].

The content of the legal and administrative status of refugees is studied by scientists on the basis of its components. "Most scientists share the opinion that the content of the administrative and legal status of refugees is a set of rights and duties established by the rules of administrative law and the guarantees of their implementation. However, it is necessary to note the modern tendency to move away from the traditional understanding of legal status as a system of rights and obligations granted to an individual by the state and the application of a "broad approach" to the problem of the structure of the legal status of the person" [10].

"All that from the point of view of legality determines, guarantees, formalizes a citizen in the state, is included in the concept of legal status. As structural mandatory elements are the appropriate legal rules; legal personality, rights and obligations, their guarantees, citizenship, legal liability, general legal relationships" [7].

"The fundamental rights of citizens should not be conceived as a category of rights distinguished by their nature from other subjective rights, just like any subjective rights,

they are powers guaranteed by law to the will of the active subject of the legal relationship, under which he is able, in order to capitalize on a direct personal interest, to conduct himself determined or to demand from the passive subject of the report a certain behavior that, if necessary, can be imposed on him with the support of the state's coercive force" [2, p.150.].

It is necessary to include in the structure of the legal status of the person: legal rules determining the status, basic rights, freedoms, legitimate interests and obligations, legal subordination, legal principles, citizenship, guarantees of rights and freedoms, legal liability, general legal relationships.

As can be seen, in a realistic scientific perspective, "the fundamental rights of citizens do not differ from other subjective rights by their nature. However, they do not differ from other subjective rights either by their object. Indeed, by the specificity of the social relations in which they arise, some fundamental citizens' rights have the same object as the subjective rights arising from the labor law relations (for example: the right to work, the right to insurance in case of illness, etc.). Other fundamental citizens' rights have a specific object identical to that of subjective rights that arise in civil legal relations (for example: the right of private property), or in matters of criminal procedure (for example: the right of defense), etc. There are also fundamental citizen rights that appear within some administrative law relationships (such as the right of the aggrieved party to his/her right by an administrative act or by not solving an application within the legal term to obtain, under the conditions provided by law, the recognition of his/her right, the annulment of the act and the compensation of the damage). Thus, it is clear that fundamental citizens' rights cannot be distinguished from other Subjective rights either by their nature or by their specific object" [2, p.151.].

Such a broad interpretation of the structure of the legal status of the person allows a comprehensive characterization of the topics of the object of the legal relationship, puts in the foreground its legal characteristics and its legal connections. The place and role of the person within the legal space of the state and the political system of contemporary society is a highly topical issue for legal doctrine and social practice. In the context of the modernization of society, the importance of the legal status of the person has become even more obvious, as it is perceived as one of the most significant political and legal categories, in close connection with the social structure of society, the level of democratization and the observance of legality.

"In addition, through such a broad approach to the interpretation of the elements of the structure of the legal status of the subjects, the object of the legal relationship, it is possible to give dynamism, following the sequence of the stages of obtaining the legal status, holding and achieving it. However, this approach to the interpretation of the administrative and legal structure of the legal status of the person, in which all the elements related to it are considered as structural elements of the legal status, cannot be considered fair. Legal capacity is a prerequisite for the appearance of the legal status of the person and, therefore, it is not necessary to be highlighted as a separate element of the administrative and legal status" [8].

The poor state of the economy, local wars and the instability of the socio-political system of some countries have led to the activation of migration processes among the population of the planet. Modern migration along with positive trends also contains some negative trends: migrants become people who are forced to leave their countries due to

local, civil wars, socio-political instability, discrimination and the like.

"With the increased inflow of foreigners established in the Republic of Moldova because of the war that started in Ukraine on 24 February 2022, the General Inspectorate of Border Police ensured an effective management of the state border. This process was complex, requiring rapid adaptation to a significant flow of people leaving Ukraine due to the military conflict. During the period 24 February 2022 - 30 December 2023, 8,269,704 crossings of Ukrainian citizens were recorded at the state border, including: crossings on the entry direction – 4,142,665, crossings on the exit direction – 4,127,039" [1].

"In order to effectively manage the processes caused by the migration crisis related to the massive influx of forcibly displaced persons from Ukraine, a thorough analysis of the situation created, the potential risks and the capacities of the national authorities to provide a crisis management mechanism was carried out. In this context, it was indispensable to adopt a strategic document for the management of migration flow, asylum and integration of foreigners, which would provide optimal solutions for strengthening the capacities of the authorities responsible for the management of migration processes. By the Government Decision 808/2022, the Program on the management of the migration flow, asylum and integration of foreigners for the years 2022-2025 was approved (hereinafter – the Program). This program derives from the Strategy for the Development of Home Affairs for 2022-2030 and will contribute to its implementation in the field of activity, based on the international treaties to which the Republic of Moldova is a party, the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, the provisions of the United Nations Conventions on: the status of refugees in the field of international protection and the protection of human rights; the status of stateless persons; the reduction of cases of statelessness, etc." [1].

The law defines the stages of granting refugee status, by submitting an application; preparing the documents for the decision on granting refugee status; the procedure for examining the application after receiving the documents; deciding on the application for refugee status, which is examined within 30 days from the date of receipt of the applicant's personal file and the written conclusion of the General Inspectorate for Migration that examined the application.

Refugee status is granted during the existence of circumstances that do not allow the refugee to return to his/her country. A refugee certificate is issued for a period of one year. When a refugee is re-registered by the Migration Service authority at their place of residence, the validity of the refugee certificate is extended. In turn, refugee status is lost if a person: voluntarily took advantage of the civil protection of the country in which he/she is located (citizenship) acquiring the citizenship of the Republic of Moldova, or voluntarily acquired the citizenship he/she previously had, or acquired the citizenship of another state and enjoys its protection; voluntarily returned to the country from which he/she had left or outside it, which is due to a well-founded fear of becoming a victim of persecution; being stateless he/she can return to his/her country of previous permanent residence, since the circumstances due to which he/she was granted refugee status no longer exist [9].

This provision does not apply to a refugee if he/she can present compelling reasons, arising from previous persecution, for his/her refusal to return to his/her country of habitual residence; has been granted asylum or residence permit in another country; can no longer refuse to avail himself/herself of the protection of the country he/she belongs

to, as the circumstances on the basis of which the person was granted refugee status no longer exist.

It also does not apply to a refugee if he can provide compelling reasons, arising from previous persecution, for refusing to benefit from the protection of his country.

The concept of "refugee" appeared in legal terminology during the First World War. Refugees were defined as people of adequate national origin, who did not enjoy the protection of their government, and who had no other nationality. The UN played a leading role in expanding the legal status of refugees with the Office of the High Commissioner for Refugees (UNHCR), under which the International Refugee Organization (IRO) was created in 1947. The basis of UNHCR's activities in determining the legal status of refugees and providing assistance to them is the 1951 UN Convention and the 1967 Protocol relating to the Status of Refugees, in which the term "refugee" was recognised as a person who, as a result of the events that took place on 1 January 1951 and, by reason of a well-founded fear, could become a victim of persecution on grounds of race, religion, nationality, membership of a particular social group or political opinion, was outside his country, did not enjoy the protection of that country or was not willing to enjoy such protection because of fear.

The issue of the legal status of refugees, on the one hand, is part of the general issue of the legal status of a person in the modern world, of human rights and of the rights of the citizen. On the other hand, this issue must be considered as a component of the issue of the legal status of aliens in their country of temporary residence. The refugee problem continues to exist as a legal, humanitarian and political one [10, p.115].

The main reason for the emergence of refugees and the strengthening of this phenomenon in the world are local wars, persecution of persons by states in the form of illegal restrictions of freedom, discrimination, violence and threats of physical destruction, which force a person not only to change his place of residence in the country, but to leave his country and seek asylum abroad. From this point of view, the refugee phenomenon is an anomaly, a legal nonsense that requires scientific study.

The issue of the administrative and legal status of refugees in the Republic of Moldova is part of the wider context of the international protection of human rights and of the obligations assumed by the Moldovan state at domestic and international level. The analysis carried out showed that, although there is a relatively well-defined regulatory framework regarding the refugee regime, the legal structure of this status requires a more detailed, systematic and aligned approach to the dynamics of migration phenomena and to the current humanitarian imperatives.

Refugee is no longer perceived as a passive subject of state protection, but as a holder of fundamental rights, the observance of which must be guaranteed by clear rules, functional institutions and effective control mechanisms. From this perspective, the administrative and legal status of refugees is configured as a complex institution, composed of a set of essential elements: legal capacity, fundamental rights and freedoms, legal obligations, procedural guarantees, access to justice, legal relations of an administrative nature and a formal or training citizenship.

At the same time, the experience of the Republic of Moldova in managing the flow of refugees from the Ukrainian conflict area has highlighted both the existing institutional capacities and the systemic vulnerabilities regarding their integration, the protection of their rights and the maintenance of a balance between the interests of the state and the

obligations assumed towards the international community.

A continuous strengthening of the national legislative framework is necessary, by adjusting it to international standards on asylum and refugees, but also by introducing additional guarantees for unconditional respect for human dignity, protection against forced return (non-refoulement), equal access to public services and legal assistance.

In conclusion, reconsidering and deepening the administrative and legal dimension of the refugee status requires not only a theoretical and doctrinal analysis, but also a firm political will to promote inclusive policies, based on the principles of international law and the values of democracy and the rule of law. Only in this way, the Republic of Moldova can honor its commitments and build an effective and humane system for the protection of refugees, in accordance with the European and international values it has embraced.

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MEASURES TO COMBAT TAX EVASION AT INTERNATIONAL LEVEL

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Summary

Tax evasion represents one of the most serious challenges to economic stability and tax fairness at the global level. In this context, the Organization for Economic Co-operation and Development (OECD) has developed the guide "Fighting Tax Crime: Ten Global Principles" to provide member and non-member states with a coherent framework for action against tax crime.

This article analyzes the principles proposed by the OECD and their effectiveness in combating tax evasion, through a documentary and comparative approach. The study highlights international good practices and identifies obstacles to the uniform implementation of these measures.

Keywords: tax evasion, tax crimes, OECD, jurisdictions, international cooperation, global principles, transparency, tax justice.

Introduction. Tax evasion and tax fraud are global phenomena that deeply affect public budgets, social equity and trust in state institutions. Their impact is not limited to direct budgetary losses, but also includes indirect effects on sustainable development, political stability and social equity. Tax evasion and tax fraud affect all economies of the world and are responsible for huge annual losses to state budgets. According to the World Bank, in many emerging countries tax evasion reduces government revenues by up to 5% of GDP [1]. In the context of globalization and the rapid development of the digital economy, tax evasion has acquired international dimensions, involving cross-border transactions and complex corporate structures.

The high social danger and the need to combat tax crimes have been and are constantly confirmed both by national legislators of each individual state and by international organizations. Thus, in order to strengthen international efforts, the Organization for Economic Co-operation and Development (Hereinafter – OECD) launched in 2017 the guide entitled "*Fighting Tax Crime: Ten Global Principles*" (Hereinafter – the Guide), which was updated in 2021. It provides a standardized framework for tax and law enforcement authorities to prevent and punish tax evasion. This paper aims to analyze these principles and highlight the extent to which they can be effectively implemented at national and international levels. to assess their impact in practice and to identify challenges and opportunities in their implementation at national and international levels.

Methods and materials applied. This research is qualitative and documentary, based on the following methods: documentary and content analysis of the OECD guidelines (2021 edition), comparative study of how various countries apply the ten principles, the

method of doctrinal evaluation by consulting and reviewing specialized literature in the field of taxation and criminal law, case studies, analysis of secondary data provided by the OECD, the International Monetary Fund, the World Bank and Transparency International. The materials used include official OECD documents, evaluation reports of the Financial Action Task Force (FATF), relevant national legislation, as well as academic articles. Additionally, the principle of dialectics was applied to the analysis of processes, events, facts in the sequence of their procedure, revealing their causes and effects.

Discussions and results obtained. First of all, we would like to emphasize that the OECD is an intergovernmental forum whose object of activity is to identify, disseminate and evaluate the application of optimal public policies to ensure economic growth, prosperity and sustainable development among member states, as well as at a global level.

The OECD focuses its activity on four priority areas:

a) Restoring confidence in the market by streamlining and leveling the mechanisms that make it work;

b) Improving and consolidating national fiscal policies;

c) Promoting innovation in the economy;

d) Capitalizing on human capital by empowering the workforce [2].

The developed guide does not produce legal effects for member states, but it represents a comprehensive set of rules on combating tax crimes. The Guide establishes guidelines both in legal as well as administrative, strategic and operational matters, drawing on the experience of national jurisdictions, such as: Austria, Australia, Czech Republic, Denmark, France, Germany, Japan, USA, Switzerland, etc.

The Guide pursues three goals:

– National jurisdictions' assessment of their own legal and operational frameworks, with a view to identifying successful practices for improving key areas of tax crime;

– Determining the level of progress of states by monitoring and publishing the results in future editions of the guide;

– Allowing states to communicate their own training needs, fact pursued in both developed and developing states.

Identifying the most appropriate way to implement the 10 principles is left to states, taking into account their national regulatory framework and their own legal culture.

1. Therefore, *a first principle* establishes the need to criminalize tax crimes, stating that jurisdictions must have a regulatory framework that ensures that tax violations constitute crimes, as well as ensuring the existence of effective applicable sanctions [3, p.15].

Regardless of the specific details of the national legal framework, this measure will be effective under the conditions that:

a) The law clearly provides for the acts that constitute tax offences;

b) The perpetrator guilty is proven, and the criminal punishment is applied;

c) For offences with a higher degree of harm, harsher punishments are established;

d) The punishments are applied in practice [3, p.16].

All national criminal laws provide for the acts that constitute tax offences and establish the punishments for their commission, and in a broader sense, a large number of European Union Member States have a functional regulatory framework for combating tax evasion.

The sanctions applied must be proportionate, promptly applied and dissuasive for tax offenders, including criminal punishments and recovery of damage.

In comparison, the Criminal Code and the Fiscal Code of the Republic of Moldova provide for sanctions for tax evasion, but cases are rarely brought to effective convictions. Corruption and political influences affect the impartial application of sanctions [4], and the Romanian Criminal Code provides for clear sanctions for tax evasion offenses (Law No. 241/2005 on the prevention and combating of tax evasion), but suspended sentences are frequently applied, which reduces the deterrent effect [4, p.94].

2. Furthermore, to ensure the effectiveness of the Law, jurisdictions must have a strategy to *combat tax evasion*. The strategy must be regularly reviewed and analyzed.

In order to ensure efficiency in combating tax crimes, tax authorities must develop a wide range of strategies to encourage compliance with the Law, in order to respond to the different attitudes of taxpayers regarding compliance with their obligations. And for the insurance of the practical effectiveness of the Criminal Law, a strategy for the implementation of this Law is to be developed. A general strategy can be described as a document that sets out the objectives of the tax authorities, identifies the risks of non-compliance with tax legislation and establishes a plan to address these risks [3, p.22].

The OECD recommends that each state have a clear, coherent, multidisciplinary and well-coordinated strategy between the institutions involved – tax authorities, prosecutors, police and other control bodies.

Romania, for example, has a general strategic framework for combating economic and financial crime, but does not have a unified strategy dedicated exclusively to tax crimes, in accordance with OECD principles. The activities of ANAF and the Prosecutor's Office are still partially coordinated [4, p.77]. In the same segment, the Republic of Moldova does not have a unified strategy for combating tax crimes, but only sectoral policies for combating economic crime. Strategies are often uncorrelated between the institutions involved – the State Fiscal Service (SFS), the National Anticorruption Center (NAC), the Anticorruption Prosecutor's Office and the Police [4, p.73].

3. Jurisdictions must have *adequate investigative powers* – this principle underlines the importance of equipping competent authorities with effective legal tools to detect, investigate and prosecute tax crimes.

The authorities responsible for investigating tax crimes must have the investigative powers they consider necessary and effective in the context of their mandate, taking into account the capacities to collaborate with other authorities that may have additional powers. Thus, without being exhaustive, national authorities must be ensured the possibility: to have access to third-party documents, to carry out searches, to seize objects and documents; to seize electronic equipment and digital data, to intercept and record communications; to interview suspects, accused persons and witnesses; to conduct undercover investigations; to order the arrest of a person; etc. The implementation of this principle is essential to effectively combat tax crimes, which can undermine public confidence in the tax system and negatively affect state revenues. By providing competent authorities with appropriate tools, it is easier to identify and sanction those who violate the law.

In this context, case studies from Romania and the Republic of Moldova provide relevant examples of the implementation and challenges associated with this principle. The General Directorate for Anti-Fiscal Fraud (DGAF) was established in 2013 with the aim of investigating major fraud. However, the resources of this institution are limited, and inter-institutional collaboration with DIICOT, DNA and the Romanian Police is often

deficient [4, p.81]. It is certain that Romania has implemented legislative and institutional measures to strengthen investigative powers in the field of tax crimes. A significant example is the National Anti-Corruption Directorate (DNA), which has extensive powers in the investigation and prosecution of corruption and economic-financial crimes. During the period 2013-2018, under the leadership of Laura Codruța Kövesi, the DNA achieved notable results, including the conviction of high-ranking officials, which strengthened public trust in law enforcement institutions [5]. In addition, Romania implemented a national electronic invoicing system (E-invoice), which allows tax authorities to monitor economic transactions in real time. The use of this system was accompanied by legislative measures that sanction its fraudulent use, thus contributing to the prevention and detection of tax crimes [6].

Along the same lines, in the Republic of Moldova, until 2021, the State Tax Service had limited powers in criminal investigations, which fell to the NAC or prosecutors, thus there was a lack of units specialized exclusively in tax crimes, which limited the efficiency of law enforcement [4, p.76]. In 2021, the state implemented a significant legislative reform, granting the SFS powers to investigate serious tax and economic crimes. This legislative change was intended to strengthen the SFS's capacity to combat tax fraud. However, the implementation of this power has raised significant challenges related to the protection of fundamental rights, staff integrity, transparency and inter-institutional collaboration. It is essential that these new powers are accompanied by adequate procedural safeguards and continuous training of staff to ensure efficiency and respect for the rule of law.

4. The next principle highlights that *jurisdictions must have the power to seize and confiscate assets*, referring to the importance of granting competent authorities effective powers to freeze, seize and confiscate assets related to tax crimes. This principle underlines the need for jurisdictions to have adequate legal and operational tools in place to effectively prevent and combat tax crimes, while ensuring that the fundamental rights of suspects are respected.

The Republic of Moldova has made significant progress in implementing this OECD principle, by developing a robust legislative framework and through effective institutional actions. Thus, on 19.03.2025, Law No.35 of 13.03.2025 amending certain normative acts (improving the mechanism for confiscation of criminal assets) was published in the Official Gazette of the Republic of Moldova, which expressly aims to improve the mechanism for confiscation of criminal assets [7]. The proposed measures are in line with Directive (EU) 2024/1260 on asset recovery and confiscation, and include: confiscation of the value equivalent of the assets, where direct confiscation is impossible, confiscation of benefits obtained from criminal assets, even in the absence of a criminal conviction, confiscation of assets transferred to third parties, if they knew or should have known that the assets came from criminal activities, repatriation of confiscated assets located abroad and their management by the Asset Recovery Agency (ARBI), establishment of a 5-year period for the analysis of the acquisition of assets, before and after the commission of the crime, etc. These measures contribute to preventing and combating tax crimes, strengthening public trust in the justice system and aligning the country with international standards in the field.

5. *Jurisdictions should have an organizational structure with defined responsibilities for combating tax and other financial crimes.* A well-defined organizational model allows for the efficient allocation of responsibilities, which helps to reduce the risk of duplication

of efforts and gaps in law enforcement. The correct organizational structure contributes to greater transparency and accountability in the process of using resources and implementing strategies. The organizational model should ensure that the authority responsible for investigating tax crimes is independent of other public authorities and is also accountable for exercising its powers fairly and with integrity [3, p.45]. This model should include:

– Clarification of roles and responsibilities: each agency or entity involved in combating tax crimes should have well-defined roles and responsibilities, avoiding overlaps or gaps in the activities carried out;

– Coordination between institutions: it is essential to establish effective coordination mechanisms between tax authorities, law enforcement agencies and other relevant institutions to ensure a rapid and effective response to tax crimes;

– Transparency and accountability: a clear organizational model contributes to increasing transparency in the decision-making process and to making the institutions involved accountable, facilitating the assessment of performance and the identification of possible deficiencies.

6. *Tax crime investigation authorities must have sufficient resources.* Regardless of the organizational model implemented, competent authorities must be allocated sufficient resources to investigate and carry out enforcement measures in relation to tax crimes. The type and size of the allocated resources depend on existing budgetary constraints and priorities, the size and level of development of the economy or strategic priorities (e.g. physical infrastructure may be a priority, while advanced analytical and technological tools are underfunded) [3, p.48].

Important resources for tax crime investigation authorities include: financial resources; human resources; tools necessary for the efficient conduct of the investigation; high-performance information technologies. Therefore, the Guide proposes adopting a proactive approach in investigating tax crimes, including through the use of digital technologies, big data analysis, risk analysis and real-time information exchange, which are crucial in detecting evasion networks. Also, continuous training of tax inspectors and prosecutors is fundamental to increasing the efficiency of tax crime investigation institutions.

7. The next principle analysed is that *tax offences should be subject to the criminal regime of predicate offences for money laundering.* Combating money laundering is a key objective for the integrity of financial systems globally. A central aspect is the designation of tax offences as predicate offences for money laundering, in line with the recommendations of the Financial Action Task Force (FATF). Jurisdictions adopt different methods to implement this designation, namely:

– *Inclusive approach*: this method assumes that all offences, including tax offences, are automatically considered predicate offences for money laundering. This approach maximises coverage, but may create difficulties in handling minor cases and may generate additional administrative costs;

– *Threshold approach*: jurisdictions set a minimum threshold for offences that can be considered predicate offences, for example the minimum penalty should be one year of imprisonment or more, or only "serious" offences should be included. This filters out minor cases and focuses resources on significant crimes;

– *Explicit list approach*: a clear and detailed list of crimes that are considered pred-

icate offences for money laundering is created. This provides legal clarity, but requires regular updates to include emerging crimes.

In the case of Romania, Law No.129/2019 on the prevention and combating of money laundering transposed the requirements of 4AMLD and 5AMLD, including tax crimes as predicate offences for money laundering. Thus, any crime that generates illicit income can constitute a basis for the charge of money laundering. Also, preliminary decision No.16/2016 of the High Court of Cassation and Justice established that it is not necessary for the predicate offence to be previously convicted in order to charge money laundering, as this is considered an autonomous crime [8]. At the same time, in the Republic of Moldova, the Criminal Code provides for money laundering as a distinct crime (Art.243 CC), applicable also to crimes committed in cross-border business, provided that they are also criminalized in national legislation. However, unlike Romania, Moldovan legislation does not explicitly include tax crimes in the list of crimes predicated on money laundering, which may limit the effectiveness of measures to prevent and combat them.

This difference may affect the effectiveness of measures to combat tax evasion and money laundering in Moldova. Thus, it is recommended that the authorities of the Republic of Moldova consider including tax crimes in the list of crimes predicated on money laundering, in accordance with international standards, in order to strengthen the framework for preventing and combating these phenomena.

8. *Jurisdictions should have an effective legal and administrative framework to facilitate collaboration between tax authorities and other competent national authorities.* Preventing and combating tax crimes involves a series of steps that must be taken, including prevention, detection, prosecution and recovery of assets and proceeds of crime. Depending on the specific circumstances, these procedures may involve the participation of several public authorities, including the tax authority, customs authority, financial market regulator, anti-money laundering authority, anti-corruption authority or prosecutor's office. This creates the need for close collaboration between the aforementioned authorities. The collaboration may take the form of: exchanging information; setting up joint investigation teams; exchanging experience; common databases; training sessions held to share information on tax crime trends; setting up joint committees to coordinate policies in areas of common responsibility.

In Romania, ANAF collaborates with the National Office for the Prevention and Combating of Money Laundering (ONPCSB), but financial analysis remains limited by the lack of modern data processing tools and the shortage of specialized personnel [9, p.122], and in the Republic of Moldova, cooperation between the SFS and the Service for the Prevention and Combating of Money Laundering is formal, but rarely produces concrete results in criminal matters. Analytical capacities are limited by the lack of trained personnel and IT infrastructure [4, p.82].

9. *Jurisdictions should establish mechanisms for international legal cooperation.* International legal cooperation in criminal matters can take the form of: transmission of documents, data and information; communication of procedural documents; extradition; transfer of convicted persons; letters rogatory; transfers of criminal proceedings; joint investigation teams; etc. The OECD crucially recommends active participation in international networks (EUROJUST, INTERPOL, FATF) to combat global fraud networks. Romania, for example, collaborates with EUROJUST, OLAF and other international bodies. However, the implementation of recommendations resulting from this cooperation remains

inconsistent due to internal bureaucracy and the long duration of judicial processes. The Republic of Moldova also cooperates with OLAF and EUROJUST through collaboration agreements, but the level of involvement in international networks is low. The application of international recommendations is slow and often formal [9, p.143].

In the context of international cooperation in the information exchange segment, Romania participates in the automatic exchange of information within the CRS and FATCA and is part of the Egmont Network. However, the authorities face challenges in the efficient processing of the large volume of cross-border information, and the Republic of Moldova has taken important steps towards international transparency, signing on 29.10.2014 the OECD Convention on Mutual Administrative Assistance in Tax Matters, which is the main international instrument that allows cooperation between tax authorities from different countries in order to combat tax evasion and fraud, adopting in this regard Government Decision no. 1275 of 26.12.2018 for the approval of the Regulation on the mechanism for the application of the provisions of international treaties of the Republic of Moldova in the field of mutual administrative assistance in tax matters. However, the capacity of our state to process and use information efficiently remains limited.

10. *Respect for the rights of the suspect*. The person against whom criminal proceedings have been initiated for the commission of a tax offence must benefit from certain guaranteed procedural rights, the respect of fundamental rights being a basic condition, thus underlining the need for proportionality and data protection.

Thus, several international documents provide for a series of rights inherent to human nature. For example, the Universal Declaration of Human Rights adopted by the General Assembly of the U.N.U. on 10 December 1948, establishes that: "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment"; "No one shall be arbitrarily arrested, detained or exiled"; "Anyone charged with a criminal offence has the right to be presumed innocent until proven guilty according to law in a public trial at which he has had all the guarantees necessary for his defence" [10]. Along the same lines, by acceding to the Convention for the Protection of Human Rights and Fundamental Freedoms of 04.11.1950, the High Contracting Parties recognize the right of every person under their jurisdiction to a fair trial (Art.6).

Jurisdictions must transpose the respective provisions into their own Constitution or, as the case may be, into the Criminal Procedure Code.

In particular, the trial of a person suspected of committing a tax offence must be conducted taking into account the principle of the presumption of innocence, the conduct of the trial within a reasonable time, the right to defense, the right not to be prosecuted, tried or punished more than once (non bis in idem), the right of the person to remain silent, the right of the person to be acquainted with the materials of the file and the legality of the criminal trial. A passive note in this regard, however, is that although national legislation contains provisions regarding the rights of taxpayers, these are often ignored in practice. The existence of arbitrary controls and the lack of a quick way to appeal are problems frequently reported by the business community.

Conclusions. International efforts to combat tax evasion have led to increased transparency and better cooperation between states. However, the effectiveness of these measures depends on coherent and uniform implementation at national level. In the future, the digitalization of tax systems and the expansion of reporting tools will be essential to strengthen the fight against tax evasion.

Although important progress has been made in combating this phenomenon, a number of challenges remain, such as jurisdictions that do not fully implement international standards, the phenomenon of aggressive tax planning through cryptocurrencies and opaque digital structures [11], the lack of a coherent global framework for taxing the digital economy, etc. These issues demonstrate that international regulation must keep pace with technological innovations and capital mobility.

The OECD Guidance on Ten Global Principles for Combating Tax Crime provides a solid framework for a systemic, fair and effective approach in the field of tax. Implementing these principles requires not only political will, but also resources, international collaboration and the modernization of the institutions involved. The Guide provides an essential framework for countries that want to modernize their approach to tax crimes. The success of this approach, however, depends on real political will, adequate financial and technological resources, strengthening international cooperation, and continuing professional education.

Consistent application of the ten principles can significantly reduce the level of tax evasion and contribute to increasing public confidence in the tax system. Thus, OECD data indicate that countries that comply with these principles record higher rates of recovery of damages and a decrease in the number of reported tax frauds.

By comparatively analyzing the application of the ten OECD principles in Romania and the Republic of Moldova, we reveal that Romania is at a more advanced stage of alignment with the OECD principles, especially through digitalization and active participation in the automatic exchange of information. And the Republic of Moldova suffers systemically from the lack of a coherent strategy, institutional underdevelopment and a high degree of corruption, which makes the effective application of these principles difficult, but both states face challenges regarding professional training, transparency of real beneficiaries and effective sanctioning of tax evasion.

It is clear that without deep institutional reforms and the consolidation of the rule of law, the OECD principles remain difficult to implement effectively in the Republic of Moldova. International technical assistance, the conditioning of aid on concrete reforms and civil society pressure are essential to accelerate progress. Moreover, inter-institutional collaboration must be supported by efficient structures, including tax investigation units, specialized prosecutors and financial analysis structures. In order to effectively combat tax crimes, it is essential that competent authorities have adequate investigative powers, and the implementation of the 10 principles of the GUIDE contributes to increasing tax transparency and strengthening public confidence in the tax system.

Therefore, based on the conclusions reported above, international technical and financial support is essential for developing countries to be able to implement these standards. Ultimately, combating tax evasion is not just a matter of economics, but one of social justice and public integrity.

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ANALYSIS OF BANKING PRACTICE IN ROMANIA AND ITS IMPACT ON THE NATIONAL BANKING SYSTEM IN THE CONTEXT OF EUROPEAN INTEGRATION

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Summary

The analysis of the European banking practice is an important aspect, since financial-banking intermediation is carried out through it. In the context of regional and global economic integration, the European banking practice has become relevant in determining the assurance and maintenance of the financial-banking stability and the efficiency of the national banking system. From a theoretical point of view, the European banking practices refer to certain standards and policies adopted by central banks and commercial banks in carrying out banking operations and activities at the regional level. In this context, we aimed to analyze the banking system of Romania and its impact on the banking system of the Republic of Moldova in the context of European integration.

Keywords: banking practice, banking system, Romania, Republic of Moldova, banking activities, European standards.

Introduction. We will conduct a scientific research on the aspects of comparative law in the field of banking system, in this case, we focus on the banking system in Romania.

The selection of certain aspects of the banking system in these states is based on the following comparative elements: the composition of the banking system, the status of the central bank, the relations between the national central banks in the European System of Central Banks and the regime of credit institutions.

Until becoming a Member State of the European Union, Romania was concerned with creating a regulatory framework aligned with community standards. "The efforts made in the last fifteen years had a single purpose: preparing the conditions for the country's accession. To this end, legislation compatible with that of the European Union was developed and adopted and there was a constant concern for the continuation of this process until the moment of Romania's effective accession to this state union" [9, p.6]. Thus, Romania has developed a Constitution that deserves appreciation from all states in the world, being in line with democratic standards.

Romania submitted its application for accession on 22 June 1995. In 1999, the Commission recommended the opening of negotiations with Slovakia, Lithuania, Latvia, Malta, Romania and Bulgaria [4, p.45]. Romania formally started negotiations on 15 February 2000, and joined the European Union in 2007.

Methods and materials applied. The scientific study was carried out using a set of research methods, including: the documentary analysis method (used to study banking legislation in Romania and European Union and review the specialized literature on Ro-

manian banking practice and European integration), the comparative analysis method (used to compare the Romanian system with the banking system of the Republic of Moldova) and the logical analysis method (used to delimit key concepts regarding the banking system and analyze the connections between the two banking systems), which contributed to facilitating the formulation of scientific conclusions.

Discussions and results obtained. A particular area that has been harmonized with the European Union legislation is the Romanian banking system. In accordance with the commitments undertaken in the negotiating documents under Chapter 11, the National Bank of Romania drafted the draft law on the Statute of the National Bank of Romania, which was adopted by the Senate (on 8 June 2004) and the Chamber of Deputies (on 24 June 2004) and promulgated by Decree No.532/2004, becoming Law No.312/2004 on the Statute of the National Bank of Romania. The new law was published in the Official Monitor of Romania No.582 of 30 June 2004, and entered into force on 31 July 2004 (30 days after the date of publication), with the exception of certain articles, which entered into force on 1 January 2005. On the date of entry into force of Law No.312/2004, Law No.101/1998 on the Statute of the National Bank of Romania, with subsequent amendments and completions, was repealed [2, p.941].

The National Bank of Romania was reformed according to the European model and was prepared to integrate into the European System of Central Banks. Thus, the National Bank of Romania, being in the period 1991-2004 a state administrative body subordinated to the Government, transformed into an independent public institution starting with 2005.

In accordance with the commitments undertaken in the negotiating documents related to Chapter 11 – Economic and Monetary Union, the Statute of the National Bank of Romania – has been harmonized with the provisions of the following Community normative acts:

– Treaty establishing the European Community;

– Protocol on the Statute of the European System of Central Banks and of the European Central Bank;

– As well as other Community regulations regarding the activity of central banks in the Member States of the European Union. Currently, the Romanian banking system is in a stage of continuous development, characterized by modernization, adaptation to market requirements and alignment with international standards.

In recent years, significant reforms have taken place to improve the transparency, stability and efficiency of the banking system. Signs of development include the increasing degree of digitalization of banking services, the expansion of access to financial services in less developed areas, the strengthening of the regulatory and supervisory framework to prevent risks and protect consumers, as well as increased competition between banks.

In Romania, the banking system is regulated by the following normative acts: Law No.312 of 28.06.2004 on the statute of the National Bank of Romania [5]; Law No.312 of 04.12.2015 on the recovery and resolution of credit institutions and investment firms, as well as for amending and supplementing certain normative acts in the financial field [6]; Law No.129 of 11.07.2019 for preventing and combating money laundering and terrorist financing, as well as for amending and supplementing certain normative acts [7].

Based on the legislation previously stated, the most important institutions of the Romanian banking system, which play crucial roles in its functioning and regulation, contributing to its stability and integrity, are:

1. The National Bank of Romania, which is the country's central bank, responsible for formulating and implementing monetary policy, regulating and supervising the banking

sector, and managing the country's foreign exchange reserves.

2. Commercial banks, the most important of which are: Romanian Commercial Bank, Transilvania Bank, Raiffeisen Bank, UniCredit Bank, and others. These banks offer a wide range of banking products and services for individual and corporate clients.

3. The Financial Supervisory Authority, which is the body responsible for regulating and supervising the capital market, insurance market, private pensions, and other non-bank financial institutions in Romania.

4. The Bank Deposit Guarantee Fund, responsible for protecting individuals' bank deposits in the event of a bank failure, by providing compensation for guaranteed bank deposits. "The main objective of the Fund is to guarantee the reimbursement of deposits made at credit institutions by individuals, legal entities or entities without legal personality, according to the conditions and limits established by the Law on Functioning of the Fund, as well as to carry out the activity as a special administrator, interim administrator or as a liquidator of credit institutions, in the event of its designation in one of these capacities. Currently, the guarantee ceiling per guaranteed depositor and per credit institution is set at the equivalent in Romanian "lei" of the amount of 100.00 Euros" [10, p.304].

5. The Credit Bureau, functional since 2004 in the Romanian banking system, is an entity that collects and manages information on the financial history of individuals and legal entities that have contracted loans. The main purpose of the credit bureau is to provide financial institutions with access to relevant data for risk assessment when granting loans.

In the Article 2 of the Law 312/2004 entitled "Fundamental objective and main tasks", we find regulated the fundamental objective of the National Bank of Romania, which consists in ensuring and maintaining price stability. "It is worth noting the full concordance between the formulation of the fundamental objective of the National Bank of Romania and the Article 2 of the statute analyzed above, on the one hand, and the provisions of the Article 2 and Article 3.3 of the Statute of the European System of Central Banks and of the European Central Bank, which demonstrates that the adoption of the current statute of the National Bank of Romania had as an absolute priority the exact adaptation of the internal provisions to the European provisions in the field of banking legislation" [2, p.492].

Emphasizing the role of the National Bank of Romania within the banking system, A. Dumitrescu-Pasecinic states that "by intervening in the organization of the banking system, the state found in it a privileged interlocutor, delegating to it the power to self-regulate. The central bank is invested with this power not as a third-party authority vis-à-vis the banking system, external to it, but precisely in consideration of the professional character of this institution" [3, p.23]. On the other hand, researcher L. Bercea expresses his opinion regarding the position of credit institutions, another type of actor in the Romanian banking system no less important than the Romanian central bank, "credit institutions carry out an activity qualified by law as commercial, but their legal status presents a marked specificity, resulting from their strong professional cohesion and from the fact that they are subject to the public control of the central bank, justified by the monetary function of credit institutions and the influence that banking operations exert on economic activity as a whole" [1, p.16].

Therefore, credit institutions in the Romanian banking system are financial entities whose main activity is to collect funds from depositors and grant loans and credits to individuals, companies and other entities. These institutions include commercial banks and other financial institutions that provide banking services.

The position and role of credit institutions in the Romanian banking system are es-

sential for the functioning of the economy and for financial intermediation. We highlight the main aspects of the position of credit institutions: financial intermediation, granting credits and loans, collecting deposits and managing financial risk. Overall, credit institutions represent a pillar of the Romanian banking system, contributing to economic growth, business development and meeting the financial needs of customers.

Also, in addition to credit institutions, the banking system also includes non-banking financial institutions. In the case of the Romanian banking system, the functioning of non-banking financial institutions is regulated by Law No.93/2009 on non-banking financial institutions. "Non-banking financial institutions may carry out, under the law, the following lending activities:

– Granting of loans: consumer loans, mortgage loans, real estate loans, microcredits, financing of commercial transactions, factoring operations, discounting, lump sum;

– Inancial leasing: issuing guarantees, assuming guarantee commitments, assuming financing commitments;

– Granting of loans with receipt of goods as collateral, respectively pawning through pawnshops;

– Granting of loans to members of non-profit associations organized on the basis of the free consent of employees/pensioners, in order to support their members through financial loans by these entities, organized in the legal form of mutual aid houses;

– Other forms of financing similar to credit" [10, p.305].

Therefore, non-bank financial institutions in Romania play an important role within the country's banking system and perform various functions in the economy. In essence, we emphasize that non-bank financial institutions provide alternative financial services, diversify access to financing and support the economic growth of the state. At the same time, non-bank financial institutions are often faster in adopting new technologies and developing innovative services, thus contributing to improving the efficiency and competitiveness of the financial sector.

Referring to the real situation, the development of innovative services has a significant impact on the banking system in Romania, bringing more benefits to both financial institutions and consumers. These include: increasing operational efficiency by automating banking processes and reducing costs and time to provide banking services, implementing mobile banking applications, especially digital payment and virtual customer assistance to guarantee quick access to customer financial management, ensuring security and protection of customer data, and implementing financial-banking inclusion by enabling access to financial-banking services to customers located in rural areas.

Another entity in Romania that is of particular interest is the Romanian Banking Institute, founded in 1991 by the National Bank of Romania and the Romanian Association of Banks. The Romanian Banking Institute is an institution that operates in the banking field and offers a wide range of training programs for specialists in the financial and banking sector. Following a thorough analysis of the activity of the Romanian Banking Institute, we found that this is a welcome practice for the Republic of Moldova.

Accordingly, it would be a brilliant idea to take over the Romanian model of activity of the Banking Institute in the banking practice of the Republic of Moldova and to found a Banking Institute in Moldova, which would be responsible for continuous professional training. The founding of the Banking Institute in Moldova would mean the creation of a scientific and practical center in the financial and banking field that would become a

true "on-the-job training". The respective institute can be founded under the auspices of either the National Bank of Moldova, the Banking Association of Moldova, or the Association of Lawyers in the Financial-Banking System of Moldova, or even under the patronage of these 3 organizations simultaneously. The Romanian Banking Institute, the American Banking Institute or any Banking Institute within the European Union states can serve as a model for the local Banking Institute.

We hope that in the not-so-distant future, the decision-makers of the National Bank of Moldova, assisted by the local banking community, will take concrete steps to bring this dream, desired and awaited by lawyers and banking experts, to life.

In the issue of continuing professional training in the financial and banking field, in many other states of the European Union, such as Austria, France or Romania, an ideal and time-tested solution is offered – that of banking institutes. By way of comparison, in the United States of America, for continuing professional training in the banking field, the American Institute of Banking has existed for over a hundred years, having been founded in 1875. This Institute offers a wide range of banking courses, grouped into different fields and subfields. Again, one can talk endlessly about the sound logic of organizing the institute and good practices in the field of holding courses.

Finally, we would like to dwell a little on the proposals and solutions that would aim to improve the field of financial and banking training in the Republic of Moldova. Among the basic actions, which cannot be postponed, and the implementation of which would bring fundamental changes to the financial and banking training process and implicitly to the entire banking sphere, we could mention the organization of courses, specializations within the framework of continuous professional training within independent institutes or affiliated with entities.

The problems identified in this chapter consist, firstly, in the lack of continuous professional training in the financial and banking field and, secondly, in the Republic of Moldova, since the person has graduated from the faculty and becomes a law graduate, he no longer has any real possibility of improvement in the financial and banking field. In case of a desire for improvement, one can only go abroad and, in particular, when it comes to the Romanian Banking Institute or another institute in a European Union country. Thus, we find that at the national level such courses are completely lacking and even the organizational-legal entity that would offer such a possibility is missing.

Conclusions. Summarizing the information presented regarding the Romanian banking system, in order to strengthen its own banking system, the Republic of Moldova could adopt good practices in this segment by:

1. Implementing an efficient banking regulatory and supervisory framework which would ensure the stability and integrity of the banking system;

2. Adopting innovative practices and new technologies to improve banking services and promote financial and banking inclusion, such as: digital payment and mobile banking services throughout the country;

3. Developing continuous financial and banking education, in particular by creating the Banking Institute of the Republic of Moldova, which would implement programs similar to those in Romania to increase the level of theoretical and practical knowledge of lawyers and banking specialists;

4. Adjusting the deposit guarantee ceiling for each person according to Romanian practice, which is currently EUR 100,000. Therefore, we found that in accordance with Article 6 of Directive 2014/49/EU of the European Parliament and of the Council of 16

April 2014 on deposit guarantee schemes, OJ L 17312.6.2014, the Member State of the European Union shall ensure that the level of deposit coverage for each depositor is EUR 100,000 in the event of the bank failing or going bankrupt.

Commenting on the issue of increasing the European deposit guarantee limit, the European Banking Authority, in its Report on deposit coverage in response to the request for advice from the European Commission of December 2023 [8], stressed that a possible increase of up to EUR 150,000 for individuals and EUR 1,000,000 for legal entities would have a limited impact on strengthening financial and banking stability in the Member States of the European Union. However, the European Parliament and the Council of the European Union, which represent the legislative power of the European Union, will take a decision on the bank deposit guarantee limit.

In general, there are opportunities for the Republic of Moldova to draw inspiration from the experience and successful practices of the Romanian banking system in order to improve its own banking system and promote economic and financial-banking development in the country. The impact of taking over good foreign practices would be felt sharply on financial-banking stability and ensuring the protection of consumer rights. But one of the most important aspects related to the harmonization of national banking legislation with European Union legislation is the fact that the laws that will be transposed in the Republic of Moldova are already translated by the Romanian authorities. Thus, this will play a crucial role in the faster fulfillment of the obligations assumed in the financial-banking field by the Republic of Moldova towards the European Union.

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PARTICULARITIES OF LAWYER'S PARTICIPATION IN THE EXAMINATION OF CASES INVOLVING TRAFFIC OFFENSES

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Summary

The participation of lawyers in the examination of traffic offenses in the Republic of Moldova presents distinct legal and procedural particularities, shaped by the provisions of the Contraventional Code and the imperatives of the right to defense, as guaranteed by the Constitution and international treaties to which the state is a party. As a representative or defender of the contravenor, the lawyer exercises specific duties of qualified legal assistance, aimed at ensuring the principles of legality, fairness, and adversarial proceedings in contraventional trials.

This paper examines the procedural status of lawyers, their competencies in both the administrative-jurisdictional and judicial phases, as well as the limits of exercising procedural rights in relation to investigative authorities and competent courts. From the perspective of national legal doctrine and judicial practice, the study analyzes the lawyer's right to submit requests for evidence, invoke exceptions of unconstitutionality, challenge flawed procedural acts, and ensure a procedural framework that meets the requirements of the right to a fair trial.

The paper emphasizes the need for legislative amendments to strengthen procedural safeguards for individuals subject to contraventional liability and to harmonize national legislation with international standards on effective legal protection. In this regard, relevant jurisprudential solutions and normative optimization proposals are evaluated to ensure a uniform and predictable application of contraventional norms in the field of road traffic.

Keywords: lawyer, legal assistance, contraventional liability, procedural safeguards, adversarial proceedings, legality, right to defense, fair trial.

Introduction. In the context of an accentuated legislative dynamics and the increase in the complexity of the legal relationships specific to road traffic, ensuring an effective defense in contravention matters becomes a pressing necessity. The process of examining traffic offences involves not only the application of the rules of substantive and procedural law, but also the observance of the fundamental principles enshrined in the national legislation and international instruments to which the Republic of Moldova is a party. In this respect, the role of the lawyer in the contravention procedure is outlined as a determining factor in guaranteeing the right to defense and in ensuring procedural fairness.

The involvement of the lawyer both in the administrative phase of finding and sanctioning contraventions, as well as in the judicial phase of the contravention case, generates a series of legal-procedural challenges. Although the Contravention Code of the Republic of Moldova enshrines the right of the offender to legal assistance, its concrete application encounters difficulties caused by legislative gaps, non-unitary jurisprudential

interpretations and administrative constraints. These aspects determine the need for an in-depth analysis of the status of the lawyer in the contravention procedure and of the effects of his participation on the quality of the act of justice.

The importance of a scientific approach to the issue derives from the significant impact of contravention sanctions on the fundamental rights and freedoms of the individual, including the right to free movement, the right to ownership of means of transport and the legal reputation of the offender. Also, the analysis of these aspects is indispensable for aligning national legislation with international standards on the protection of human rights and for making legal defense mechanisms more efficient.

This study aims to examine, both from a theoretical and a practical perspective, the role of the lawyer in the procedure for examining traffic violations, highlighting the existing legislative shortcomings and identifying viable solutions to strengthen the procedural guarantees of the offenders. The analysis will be based on the evaluation of the national normative framework, judicial practice and legal doctrine, with the objective of formulating proposals for a "ferenda law" in order to optimize the defense mechanism in contravention matters.

Methods and materials applied. In order to carry out this study, research methods specific to legal sciences were used, meant to ensure a deep and rigorous analysis of the approached issues. Thus, the research was based on the analytical method, applied in order to examine the national and international normative framework regarding the participation of the lawyer in the contravention process. At the same time, the comparative method was used, which allowed the identification of similarities and differences between the regulations of the Republic of Moldova and those of other European states on legal assistance in contravention matters. Within the scientific approach, the logical and systemic method was also used, with the aim of delimiting and structuring the relevant legal concepts, as well as highlighting the interdependencies between the institutions of contravention law.

Another method applied was the empirical one, materialized in the analysis of the national judicial practice by examining relevant court decisions and the way in which the courts interpret the legal norms in the field of contravention litigation. Also, the research involved the method of legal interpretation, used to clarify the meaning and applicability of legal provisions in the light of doctrine and jurisprudence.

The materials used in the elaboration of this study include national and international normative acts, such as: the Constitution of the Republic of Moldova, the Contravention Code, the Contravention Procedure Code, secondary legislation, court decisions, as well as relevant legal studies and monographs. Also, doctrinal opinions of specialists in contravention and administrative law were consulted, as well as reports of national and international institutions on the efficiency of legal assistance in contravention matters. By applying these methods and using the mentioned sources, the study aims to contribute to the clarification and improvement of the normative and practical framework of the lawyer's participation in contravention procedures in the field of road traffic.

Discussion and results obtained. At the global level, the issue of human rights remains one of the central themes of political and social life, occupying a particular role in public debates in many international organizations and meetings. The universal recognition of these rights is not the result of a favorable coincidence, but the expression of the evolution of humanity, the development of collective consciousness and international

collaboration. However, more than 75 years after the adoption of the Universal Declaration of Human Rights, difficulties in ensuring respect for the principle of equal rights persist in some states, despite the explicit provisions of this fundamental document.

In this context, respect for the rights of defense and ensuring a fair trial in contravention cases is not only an obligation of the state, but also an essential condition for effectively guaranteeing the fundamental rights of the data subjects. The participation of the lawyer in the procedure for examining traffic offences is a key element in this mechanism, having the role of preventing possible abuses, ensuring the correct interpretation and application of the legal norms and protecting the procedural rights of the offenders.

Ensuring fundamental human rights, as set out in the Universal Declaration of Human Rights, is an essential principle in the legal process, but, at the same time, a significant challenge when these rights must be guaranteed to persons involved in procedures specific to the commission of acts liable for contravention.

The Universal Declaration of Human Rights, in Art.11, item (1), provides that "everyone accused of committing an act of a criminal nature has the right to be presumed innocent until his guilt has been legally established, in the course of a public trial, in which he has been assured all the guarantees necessary for his defense". This fundamental norm, which regulates the right to defense in the context of criminal trials, also applies in the case of contravention proceedings, due to the regulations provided for in the Contravention Code of the Republic of Moldova. Thus, according to Art.374, para.(3) of this Code, the contravention process is carried out on the basis of the general principles of contravention law and in accordance with national and international legislation, including the provisions of the Criminal Procedure Code where applicable. This regulation strengthens the applicability of the rule of the Universal Declaration of Human Rights also in the field of contravention, thus ensuring the protection of the right to defense and the observance of the corresponding procedural guarantees.

The right to defense, in its broad sense, includes all the procedural mechanisms and guarantees that allow the accused person to defend his rights and contest the accusations made against him [13, p.32]. In contravention proceedings, this right is essential to ensure the fairness of the trial, as well as to prevent possible abuses or miscarriages of justice. Thus, the involvement of the lawyer in the process of examining traffic offences becomes crucial for ensuring a fair and equitable trial, in which all the rights of the offender are respected and protected.

Starting from the regulation of the right to defense in Article 26 of the Constitution of the Republic of Moldova, which enshrines the guarantee of this right throughout the trial, the legislator included in the contravention legislation the principles set forth in the Universal Declaration of Human Rights. Thus, on the basis of the Constitution, these principles were integrated into the general provisions on the contravention process of the Contravention Code of the Republic of Moldova, more precisely in Book Two, Title I, Chapter I.

In the literature, a special interest has been given to the classification of defense according to different criteria. Among the most common classifications are the following:

According to the manner of occurrence: a) the defense established by law, which is carried out by appointing the lawyer by the coordinator of the territorial office of the National Council for State-Guaranteed Legal Aid; b) the defense established by contract.

According to the subjects exercising the defense: a) the defense exercised by the

accused; b) the defense exercised by the lawyer.

According to the mode of manifestation: a) defense in the process of ascertaining the facts; b) defense in the examination of the contravention case; c) defense in the adoption of decisions; d) defense in relation to the challenge of decisions.

According to the phase of the contravention process and the status of the accused person: a) the defense requested or exercised by the perpetrator; b) the defense requested or exercised by the offender; c) the defense requested or exercised by the offender.

In the contravention process, the authority competent to settle the contravention case has the obligation to ensure the parties and other participants in the process the full exercise of the procedural rights, according to the regulations established in the Contravention Code. During the trial, the parties have the right to be assisted by a lawyer and, at the time of initiating the contravention proceedings, the competent authority is obliged to inform the person subject to contravention liability of this right to receive legal aid from a lawyer [14].

The concept of "defense" is distinguished by its complexity, which is why it is necessary to distinguish between this term and that of "defender", which in practice is often confused. Thus, "defense" is a broader concept than "defender". The defence includes both the defence exercised personally by the offender and the defence carried out through a lawyer chosen or appointed by the court. Also, when the offender decides to give up the designated defender, this does not mean that he also gives up his right of defense. He has the option of choosing another defender or defending himself.

Defense, as a form of legal aid, refers to the procedural activity through which the rights and interests of the parties involved in the process are capitalized, thus constituting an essential guarantee for ensuring a fair trial [3].

The right to advice, defence and representation is fundamental to ensuring a fair trial, giving individuals the opportunity to benefit from protection before the courts of law and to fully exploit their rights. In this regard, individuals can apply for legal aid, and the state has the obligation to ensure their access to the courts and to a fair trial.

The right to be represented by a lawyer must be effective and concrete, and in this context, persons in police custody must be officially informed of their rights of defence, including the right to legal aid, when certain conditions are met. Moreover, the police have the obligation to provide them with the necessary means to be able to contact and communicate with their lawyer. Also, the suspect or defendant must benefit from sufficient time and favorable conditions to prepare his defense, given that the effectiveness of legal aid can be influenced by the circumstances in which the communication between the lawyer and the client takes place [1, p.85]. In the context of the contravention process, these aspects are essential to guarantee the right of defense of the offender and to ensure a fair and equitable trial.

In the contravention process, the lawyer can participate in any stage of the procedure, but his presence is not mandatory in all cases. For example, in the initial stage of finding the contravention, carried out by the ascertaining agent, the presence of the lawyer is not necessary. The ascertaining officer has the obligation to examine both the mitigating and aggravating circumstances, collecting evidence both in the defense of the offender and in the prosecution. Thus, the function of proving innocence is performed by the ascertaining agent through evidence in defense, where appropriate, which differentiates this phase from other stages of the contravention process.

However, the lawyer may be present at the request of the offender, especially when he is accompanied to the hearings. As regards the contravention procedure in the field of road traffic, there are certain particularities related to the applicability of the law and the way in which the defense is carried out. For example, in the case of traffic offences, lawyers can intervene at the stage when the competent authority orders the sanctioning measures, including in cases where the offender contests the fine or other sanctions imposed. In these cases, the lawyer can assist the offender in defending his or her right to a fair penalty, given that violations of the law are not always clear, and the circumstances of each case may influence the final decision.

On the other hand, the presence of the lawyer becomes mandatory when the case is examined in court. Under these circumstances, the offender has the right to appoint a lawyer (based on a contract) or, if he does not have the financial resources to hire a lawyer, to accept a lawyer appointed ex officio by the coordinator of the territorial office of the National Council for State-Guaranteed Legal Aid. Moreover, in the case of examining the appeal against the court's decision. The presence of the lawyer is imperative.

In addition, according to Art.378, para.(4) of the Contravention Code, the presence of the lawyer becomes mandatory when the suspect risks serious sanctions, such as contravention arrest. This aspect is particularly relevant in the field of road traffic, where certain violations can lead to custodial sanctions, and the lawyer plays an essential role in ensuring the offender's right to defense. For example, in cases of road accidents with victims or in situations where the offender challenges the measure of withholding the driving license, the presence of the lawyer is not only a guarantee of procedural rights, but also a necessity for ensuring an effective defense.

An important aspect in the contravention process is the express clarification of the presence of the lawyer even in the simplified procedure for finding and examining the contravention. If a contravention is detected, the ascertaining officer does not conclude a report, but issues a decision, which will include, in addition to the finding of the relevant facts and circumstances, the mention of the identity of the lawyer, if he has been requested by the offender. Thus, in the field of road traffic, where many of the contraventions committed refer to the violation of traffic rules, the documentation procedure may involve the presence of the lawyer when the offender requests legal assistance, even at the initial stage of establishing the fact.

The Contravention Code of the Republic of Moldova in Art.392, para.(2) regulates the corresponding applicability of the provisions of the Criminal Procedure Code, as regards the lawyer's rights to assist the persons involved in the contravention process. Although the contravention process does not present the complexity of a criminal trial, given the lower degree of social danger of the unlawful acts committed, in many cases, contravention cases are solved through extrajudicial procedures, without reaching the court. However, the right to defense is guaranteed for all parties involved according to Art.378, para.(2), which provides that "the parties have the right to be assisted by a lawyer".

In the contravention process, the right to defense applies not only to the offender, but also to other parties involved, such as the victim and witnesses. Thus, according to Art.384, para.(2), letter a), the person in respect of whom a contravention process has been initiated benefits from the right to be defended. Also, the victim has the right to be assisted by a lawyer of his choice, according to Art.387, para.(3), letter e), and the witness has the same right, according to Article 388, para.(3), letter g). In the case of witnesses,

who have an auxiliary status in the trial, the right to legal aid is essential, given their role in providing relevant information [10, p.5]. In particular, lawyers play a crucial role in protecting the rights of witnesses, including their right not to incriminate themselves.

Although in the case of traffic offences, witnesses can be considered subjective sources of important information, the way in which they are heard does not differ from the procedure for hearing other participants in the trial, such as the injured parties or the accused. Legal aid for witnesses is therefore important for guaranteeing a fair trial, ensuring that they benefit from their procedural rights, in particular as regards protection against self-incrimination. This distinction between the right of the witness to remain silent and the right not to incriminate himself is essential for a fair and equitable procedure in the contravention process.

Thus, in the contravention process in the field of road traffic, the observance of the right to defense not only for the offender, but also for the victims and witnesses, constitutes a guarantee of a fair trial, in which each participant benefits from the adequate protection of his fundamental rights.

In the contravention process, a vicious phenomenon that can be observed is the omission or avoidance by the ascertaining agents of the obligation to give the perpetrator or victim enough time to become aware of the procedural rights guaranteed to them. Although the rights are indicated in the report drawn up, and the offender signs to confirm that he has been informed about the contravention charged and about his rights and obligations provided by Arts.34, 378, 384, 387 and 448 of the Contravention Code, we regret to note that not all ascertaining agents correctly fulfill the obligation to inform. The reasons can vary, from time pressure, to other circumstances that affect compliance with the full information process of the parties involved.

This obligation to inform is explicitly provided for in Art.378 para.(1) and para.(3) of the Contravention Code of the Republic of Moldova, as well as in Art.443 para.(1) letter f), which clearly stipulates that the persons concerned by the contravention process, both the perpetrators and the victims, must be informed about their procedural rights and obligations. Ideally, the report should include all this essential information and the investigating officer should ensure adequate communication so that each party correctly understands the content of the signed document.

Ensuring the rights of the defence in this light is a fundamental criterion of a fair trial. According to the case law of the European Court of Human Rights, any lack of assistance or insufficient assistance may call into question the fairness of the trial, with the effect of raising doubts about the correctness of the act of justice.

As regards road traffic offences, the procedure for documenting them must follow the same principles, taking care to ensure a complete and correct right to information. In this regard, the perpetrators must be aware of all the details of the accusations against them and their legal qualification, thus having the opportunity to prepare for a fair and complete defense. The right to be informed is not just a formality, but an essential condition for a fair trial that guarantees justice in a fair and transparent manner.

With regard to the right to defend oneself in person and the right to be represented by a lawyer, ECHR case law has emphasised that, in cases where there are strong indications that the accused cannot adequately prepare his defence due to a lack of legal experience or the highly technical nature of the issues being discussed. The judge has the obligation to order the appointment of a lawyer. This is especially true when the case rais-

es legal issues that require a certain level of professional knowledge. The ECHR stressed that the state should not leave the accused to meet these requirements alone, and the trial cannot be considered fair if the accused person does not receive appropriate legal aid. The Court also underlined that the notion of "fair trial" implies that the accused has the assistance of a lawyer from the first hours of the trial, especially in cases where he so requests [10, p.55].

At the same time, it is relevant that the involvement of the lawyer in the contravention process varies significantly depending on the legislation of each state, and in the field of road traffic this aspect is regulated differently, depending on the severity of the contravention and the applicable procedures. In many jurisdictions, the lawyer plays a key role in ensuring a fair trial, but the level of involvement of the lawyer can be determined by a number of factors, including the nature of the traffic offence and the procedure applied (administrative or judicial).

In the Republic of Moldova, the lawyer is compulsorily involved when the case is examined in court, and the offender is in a situation that involves a serious sanction, such as the retention of the driver's license or the imposition of a significant fine. The lawyer can also assist the person at the hearings, but this is not mandatory in out-of-court procedures for finding contraventions, such as the drawing up of a report by the ascertaining officer. However, the offender may request the presence of a lawyer at these stages.

In France, the lawyer can be involved from the initial phase of the trial, especially in cases where the contravention acts raise complex or technical legal issues. In many cases, lawyers are requested to assist in administrative procedures for solving contraventions, and in the courts, the lawyer has an active role, helping to challenge the sanction applied or even to reduce it.

In Germany, the involvement of the lawyer in the misdemeanor process, especially in the case of traffic violations, depends on the seriousness of the act. For simpler contraventions, such as exceeding the speed limit, the lawyer is not mandatory, and the offender can solve the case by paying a fine or through an administrative procedure. However, in cases of more serious misdemeanors, such as driving under the influence of alcohol, the lawyer may be involved to assist the offender's defenses in court.

In Spain, the lawyer plays an active role even in the preliminary stages of the contravention procedure. In the case of serious traffic offences, the lawyer is called upon to participate in the process of challenging the decisions of local or regional authorities. In addition, if the offender risks severe penalties, the lawyer has the right to request their reduction or to negotiate an alternative solution.

In Italy, administrative procedures for traffic offences are strictly regulated, and the lawyer may be involved in the process of appealing fines. If an offender appeals a major penalty, the lawyer can intervene directly to ensure that the client's rights are respected and provide legal assistance in court.

Therefore, the degree of involvement of the lawyer varies significantly depending on the legal system, the nature of the contravention and the procedure applied. In general, in the Member States of the European Union, there is a tendency to extend the role of the lawyer in cases of serious contraventions, in order to ensure respect for the rights of defence and guarantee a fair trial.

Conclusions. The participation of the lawyer in the process of examining cases of traffic offences is an essential pillar of a fair legal system, having the role of ensuring the

respect of the fundamental rights of the offender and the victim. As we have analyzed throughout the paper, the lawyer's involvement in the stages of the contravention process is not limited only to the defense of the accused person, but also extends to the rights of the victim, as well as to the observance of the correct procedures for ascertaining and sanctioning the contravention [15, p.112].

One of the main conclusions is that the right to defense, guaranteed at national and international level by various normative acts, including the European Convention on Human Rights, must be exercised at all stages of the contravention process. However, there are a number of gaps in the correct implementation of this right in various European states, including the Republic of Moldova. In many cases, the offender is not sufficiently informed about his procedural rights or does not have access to legal aid at the early stages of the procedure, such as when drawing up the minutes. These deficiencies can seriously affect the fairness of the trial and, in certain situations, may constitute a violation of the right to a fair trial.

In the procedure for sanctioning traffic offences, the legal and technical implications of the act may exceed the offender's ability to defend himself effectively without legal assistance. In this regard, it is essential that the authorities assume the responsibility of ensuring access to the defense from the early stages of the contravention process, regardless of the complexity of the procedure. It is necessary for the investigating officers to rigorously fulfill the obligation to inform the offender of his or her right to be assisted by a lawyer, and for the State to guarantee favourable conditions for challenging sanctions, where appropriate.

European Court of Human Rights case-law, which emphasises the importance of legal aid in ensuring a fair trial, is an essential guide for national legislation. The State has the obligation to respect the rights of defense, including by appointing a lawyer in cases where the accusations involve complex technical aspects, and the offender does not have the necessary knowledge to defend himself effectively. Thus, the procedures for appointing a lawyer should be clearly regulated, especially in cases of traffic offences involving significant risks to public safety and the physical integrity of the persons involved.

The proposals to improve the contravention process in the field of road traffic include, first of all, the strengthening of the obligation of the ascertaining agents to properly inform the offender about the right to benefit from legal aid, both in the phase of drawing up the report and in the phase of contesting the sanction. It is also necessary for national legislation to provide more clearly for the possibility to request a lawyer from the first hours of the procedure, especially in cases involving severe penalties, such as suspension of the driving license.

Furthermore, the legal education of finding officers and those who manage contravention proceedings should be strengthened to ensure that they are fully aware of their responsibility to protect the rights of the offender, including the right to be assisted by a lawyer. Legislative reforms should also place greater emphasis on the protection of victims' rights in the contravention process, ensuring that they are respected and that victims have the right to be represented by a lawyer when necessary.

Conclusions. In conclusion, in order to ensure a fair and efficient contravention justice system, it is essential that the procedural rights of the offender and the victim are protected throughout the procedure. The involvement of the lawyer is a fundamental element of this process, and the legislation must ensure the necessary conditions to guar-

antee access to defence and to prevent the violation of the fundamental rights of those involved in cases of committing traffic offences. Thus, a continuous reform of regulations and procedures is necessary to meet the need for fairness and transparency in the contravention system.

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DEFINITION AND CHARACTERIZATION OF ENVIRONMENTAL CRIME

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Summary

In a context marked by the worsening of environmental crises, this article analyzes the concept of environmental crime from an interdisciplinary perspective, exploring its legal, criminological, and ecological dimensions. It reviews the main doctrinal and institutional definitions as well as contemporary debates concerning the conceptual boundaries of the phenomenon.

The article also proposes a comprehensive definition of environmental crime, highlighting its core components: illicit conduct, ecological harm, and criminological relevance. In the second part, the article examines the defining features of environmental crime, such as its transnational nature, investigative challenges, irreversible consequences, and the need for interinstitutional cooperation. The study emphasizes the necessity of a systemic reconsideration of ecological justice policies with a view to strengthening environmental protection.

Keywords: crime, environment, justice, heritage, offenses, transnationality, protection, cooperation, harm, liability.

Introduction. In recent decades, the accelerated degradation of the environment and the growing negative impact of anthropogenic activities have prompted a profound reassessment of the relationship between humans and nature, both from legal and socio-moral standpoints. In this context, environmental crime has acquired particular significance, being regarded as an emerging and systemic threat to global ecological security. Although previously marginalized within traditional criminological theories, this form of crime has, in recent years, become a priority area of research and regulation, as its effects have become increasingly visible: from mass deforestation and industrial pollution to the depletion of natural resources and irreversible climate change.

Furthermore, it must be emphasized that addressing environmental crime requires an interdisciplinary perspective, situated at the intersection of criminal law, criminology, ecology, and public policy. The focus lies not only on identifying illicit behaviors that affect the environment, but also on understanding the depth of ecological harm and the ways in which such harm impacts communities, common resources, and future generations.

Accordingly, a thorough understanding of the specificity and severity of this phenomenon necessitates a systematic analysis of the conceptual and doctrinal framework of environmental crime. This analysis naturally begins with a reflection on the notion itself, on how it is defined in legal doctrine, in international and national regulations, and within the framework of contemporary criminological theories.

Methods and materials applied. This research is based on both theoretical and practical approaches, considering the complexity of the environmental crime phenomenon. Initially, relevant sources from the fields of criminology, ecology, and criminal law were analyzed to better understand how environmental crime is defined and interpreted. Furthermore, national and international legal provisions on environmental protection were examined, with particular attention paid to the Criminal Code of the Republic of Moldova and the directives of the European Union.

The research also included a comparative analysis to identify the similarities and differences in the way environmental crime is addressed in various jurisdictions. Moreover, statistical reports and studies published by international institutions such as Interpol and the United Nations Environment Programme (UNEP) were consulted in order to better understand the global scope and impact of this phenomenon. This methodological approach facilitated a clearer comprehension of the practical challenges in law enforcement and proved valuable in formulating proposals for legislative and institutional improvements. Consequently, the chosen methodology enabled a balanced and well-founded investigation that combined theoretical analysis with empirical data, thereby offering a comprehensive overview of environmental crime.

Discussions and results obtained. ***I. Defining environmental crime: conceptual and doctrinal dimensions***. To begin with, it must be emphasized that defining environmental crime constitutes a fundamental step in understanding, delimiting, and properly regulating this complex phenomenon, whose implications extend across legal, criminological, and ecological domains. First and foremost, unlike conventional forms of criminality, which typically involve a direct relationship between offender and victim, environmental crime often entails an indirect, diffuse, and frequently intangible link between the perpetrator and the consequences of the offense – consequences that affect communities, non-human entities, or even future generations. As a result, the systemic and often invisible nature of ecological harm generates semantic and legal difficulties in formulating a unified definition.

Furthermore, in light of accelerated industrial development, rapid urbanization, and economic globalization, the intensity and frequency of environmentally harmful acts have increased substantially. Thus, the continuous redefinition of the concept's boundaries is not merely opportune, but indeed imperative.

At the institutional level, it is relevant to note that Interpol defines environmental crime as "any illegal activity that harms the environment and violates national or international environmental laws" [11, p.5]. Similarly, the United Nations Environment Program (UNEP) classifies this category of offenses among the most serious forms of transnational organized crime, equating it in both impact and profitability with drug trafficking, arms trafficking, and human trafficking [13, p.8]. Additionally, according to a supporting document issued by Europol, criminal networks exploit legislative loopholes and the lack of technical expertise to circumvent environmental controls, thereby complicating cross-border investigations and undermining the effectiveness of law enforcement meas-

ures [10, p.7-9]. International criminal organizations also benefit from disparities in legal frameworks across jurisdictions and from weak enforcement mechanisms, both of which facilitate illicit activities in the environmental domain.

On the other hand, the specialized literature outlines three major doctrinal approaches to defining environmental crime, often positioned in opposition to one another.

On one side, a legalist-penal perspective, endorsed by scholars such as Mihai Adrian Hotca, advocates for a narrow interpretation according to which environmental crime should be limited strictly to acts explicitly criminalized under current penal law [3, p.45]. From this standpoint, any act not expressly defined as a criminal offense cannot be classified as an ecological crime. In the same vein, Roxana Popescu warns that extending the concept beyond legal confines may lead to terminological ambiguities and weaken the normative precision and effectiveness of environmental law [8, p.73]. In this regard, although normatively grounded, this perspective is criticized for reducing the entire phenomenon to a matter of legal compliance, thereby disregarding the broader socio-ecological realities.

In contrast, proponents of *green criminology* – such as Rob White, Nigel South, and Rachelle Marshall – promote a critical and inclusive approach that transcends the strict confines of legal definitions. According to their view, environmental harm should be assessed not solely based on its legality, but rather on the actual damage inflicted upon nature, regardless of whether such acts are criminalized under existing laws [9, p.16]. Moreover, they denounce the collusion between the state, economic systems, and the law itself, as well as the complete disregard for non-human victims. Complementing this critique, Laura Westra argues that ignoring ecological harm simply because it lacks legal sanction perpetuates a deeply rooted form of systemic injustice [6, p.110].

Within this approach, additional concepts have emerged, such as the *rights of nature*, *legal biocentrism*, and *intergenerational responsibility*. Unlike the legalist perspective, these notions place the focus of analysis on the moral and ecological relationship between humans and the natural environment, emphasizing ethical accountability and long-term sustainability over strictly codified legality.

Moreover, positioned between the two opposing paradigms is an integrative doctrinal current, supported by scholars such as Michael Lynch, Pierre Tremblay, and Paul Stretesky, who suggest that environmental crime should be understood as comprising all acts that produce significant ecological harm, regardless of whether they are explicitly sanctioned by positive criminal law [4, p.102]. In other words, while the relevance of legal frameworks is not dismissed, their importance is subordinated to the actual consequences of the harmful conduct. In this context, Brisman and South draw attention to the gap between what is legal and what is ecologically just, arguing that it is the role of criminology to document and expose such discrepancies [1, p.25].

The debate has also been reinvigorated by recent initiatives seeking to formally recognize the concept of *ecocide* as an autonomous category of international crime. There is an increasingly widespread discourse advocating for the amendment of the Rome Statute of the International Criminal Court to include the intentional or reckless destruction of the environment as a crime on par with genocide or crimes against humanity. According to legal scholar Philippe Sands, the formal recognition of ecocide could become an essential legal instrument for holding accountable those actors responsible for large-scale ecological devastation [5, p.214].

Based on the arguments outlined above and taking into account the inherent complexity of the phenomenon, we consider it both necessary and appropriate to formulate a comprehensive definition of environmental crime, one that reflects not only the legal dimension of punishable conduct but also its deeper implications for ecological equilibrium and collective security. Therefore, *environmental crime* can be conceptualized as the totality of illicit acts or omissions, committed either intentionally or through negligence, which contravene imperative norms governing environmental protection, whether of national or international origin, and which cause serious harm to ecosystem integrity, public health, and natural resources, with the potential to generate not only isolated but also cumulative or systemic consequences over the medium and long term.

In this regard, it is essential to emphasize that such a definition necessarily involves a tripartite analytical framework comprising three fundamental structural dimensions, without which a comprehensive understanding of the phenomenon would not be feasible.

First, there is the *illicit conduct*, meaning that the actions qualifying as environmental crime are explicitly provided for by criminal or administrative sanctions, thereby representing a breach of the legal norms established to protect the environment. This component directly addresses the relationship between legal normativity and the behavior of the active subject. Once environmental protection becomes a matter of positive legal regulation, any conduct in contradiction with this framework acquires an illicit character and, consequently, falls within the scope of legal, penal, or administrative liability. Thus, the normative dimension offers an objective criterion for distinguishing between permissible and prohibited conduct under the law.

Second, we must emphasize the *negative ecological outcome*, as not every illicit act qualifies as environmental crime, only those which either cause or are capable of causing severe damage to the components of the natural environment. These consequences pertain to the degradation or irreversible destruction of natural resources, the disruption of ecological cycles, or the impairment of the environment's capacity for self-regeneration. This aspect, manifested through a harmful and enduring result, gives environmental crime its distinctive specificity, as the harm inflicted is not typically immediate or quantifiable, but develops progressively, with long-term effects on public health, quality of life, and intergenerational sustainability. Therefore, what differentiates these offenses is not merely the material object, i.e., the environment itself, but also the magnitude and depth of the resulting harm.

Thirdly, an essential element that confers both criminological relevance and strategic value to this definition is the *criminological dimension* of the phenomenon. This aspect entails, on one hand, the analysis of the circumstances under which the offenses are committed, the motivations and interests involved; and on the other hand, the identification of offender typologies, whether individual actors or collective entities (such as commercial corporations, economic interest groups, or transnational criminal networks). Notably, many of these unlawful practices stem from a dynamic of institutional opportunism, regulatory gaps, or systemic complicity, aligning them more closely with organized crime than with the classical model of the individual environmental offender. Furthermore, a particular characteristic is that the harm generated is not confined to direct victims but extends to collateral effects on vulnerable communities, often lacking effective mechanisms of defense or access to environmental justice. From this standpoint, environmental crime becomes a vector of structural inequality and social injustice, disproportionately

affecting populations with limited political, economic, or legal power.

As stated in Directive 2008/99/EC of the European Union, such conduct must be treated as serious offenses, even when perpetrated by legal persons [14, p.28].

At the national level, it is worth noting that in the Republic of Moldova, environmental crime is regulated under Chapter IX of the Criminal Code, which includes offenses such as *violations of ecological safety requirements* (Art. 223) or *destruction of protected natural areas* (Art. 235). Additionally, Law No.136/2024 [15] introduced several new provisions that criminalize specific environmental offenses, including: Article 223¹: *Failure or improper performance of duties related to compliance with environmental legislation*; Article 227: *Soil pollution*; Article 228¹: *Illegal use of subsoil*; Article 229¹: *Unlawful damming or modification of watercourses*; Article 229²: *Unauthorized use of water resources.*

Hence, it becomes clear that defining environmental crime is not merely a theoretical exercise, but a matter of strategic importance for ecological justice and societal responsibility. In the current global context, marked by climate crises and increasing ecological vulnerabilities, the recognition and effective sanctioning of such conduct are not only necessary but urgent. They are essential for safeguarding the public interest and the fundamental right to a healthy environment, as enshrined in Article 37 of the Constitution of the Republic of Moldova: "*The right to a healthy environment*".

II. Defining Characteristics of Environmental Crime. Following the conceptual clarifications, a crucial step in the criminological analysis of environmental crime is, without a doubt, the identification and delineation of its defining traits. As highlighted in the specialized literature, these traits not only help delineate the object of study, but also contribute to the design of effective mechanisms for prevention, legal response, administrative intervention, and institutional coordination.

In this regard, according to the observations made by Mihai Adrian Hotca, environmental crime is characterized by a wide-reaching and often irreversible impact on the natural balance. Moreover, since such offenses are frequently invisible during their initial stages, they create substantial difficulties in identifying and prosecuting perpetrators [3, p.78-80]. In turn, Rob White, one of the founding voices in *green criminology*, argues that this phenomenon entails a form of collective victimization, thus requiring an expanded analytical framework that transcends classical legal approaches and incorporates both ecological and moral dimensions of harm [7, p.22-25].

Taking these considerations into account, and based on the existing normative and doctrinal framework, the following can be identified as essential features of environmental crime:

1) *Multidimensionality of the phenomenon*. This trait is undeniably defining, as it underscores the fact that environmental crime cannot be confined to a single mode of expression or legal regulation. From a legal perspective, it must be emphasized that this form of crime encompasses a broad range of illicit conduct, including both criminal offenses under penal law (e.g., water pollution or destruction of protected habitats), and contraventional or administrative violations (such as non-compliance with waste management regulations or the absence of environmental permits).

This plurality of legal forms generates a diversity of sanctioning regimes and institutional competencies, which in turn necessitate effective coordination among environmental authorities, law enforcement bodies, and judicial institutions. The overlapping responsibilities and the multifaceted nature of environmental harm require a unified and

strategic institutional response in order to achieve meaningful enforcement.

On the other hand, the multidimensionality of environmental crime also manifests at the sectoral level, as it occurs across a wide range of economic sectors and human activities. For instance, in the extractive industry, environmental offenses include the illegal exploitation of mineral resources, often conducted without regard for technical or ecological safety standards. In the forestry sector, unauthorized deforestation and illegal logging constitute serious threats to climate balance and biodiversity. In the fisheries sector, illegal fishing and the use of prohibited techniques endanger aquatic reserves and undermine the sustainability of ecosystems. Similarly, in agriculture, the uncontrolled use of pesticides and fertilizers leads to soil degradation and contamination of groundwater. In the transportation sector, the improper handling and storage of hazardous or toxic substances poses significant risks to both public health and the environment.

This diversity of impacted sectors underscores the hybrid character of environmental crime, which encompasses not only ecological dimensions but also generates social effects (e.g., through the disruption of local communities), economic consequences (by damaging natural resources and regulated markets), and legal implications (due to the demand for coherence, clarity, and efficiency in regulation and enforcement). For this reason, the prevention and suppression of environmental crime cannot be effectively achieved in the absence of an intersectoral approach that combines coherent legislation, specialized institutions, and tailored enforcement mechanisms specific to each domain of activity. Therefore, the multidimensionality of this phenomenon necessitates not only a complex understanding of its causes and manifestations, but also the development of an integrated intervention strategy capable of addressing contemporary ecological challenges in a comprehensive and coordinated manner.

2) *Harm to the Public Interest and Common Heritage*. This dimension constitutes one of the central aspects of environmental crime, underscoring its fundamental distinction from conventional forms of criminal behavior. While traditional crimes typically affect specific individuals or well-defined groups, environmental offenses transcend private interests and instead inflict harm on assets belonging to society as a whole. In legal and academic literature, these assets are referred to as the *common heritage of humanity*, encompassing essential environmental components such as air, water, soil, biodiversity, forests, terrestrial and aquatic ecosystems, climate stability, and, broadly defined, public health.

These environmental components cannot be privately claimed, exploited, or transferred exclusively by a single individual or entity, as they are vital for the survival and well-being of all people. Consequently, any action that significantly impairs these resources constitutes a direct violation of the public interest, with multifaceted implications, ecological, social, economic, demographic, and health-related. From this perspective, environmental crime may be seen as a form of indirect collective victimization, where harm is distributed across broad segments of the population and extends to future generations, who are forced to live in a degraded environment, with depleted resources and increased health risks.

Moreover, unlike conventional offenses, such as theft, fraud, or bodily harm, victims of environmental crime are often difficult to identify or individualize, and the resulting damages may be delayed, obscured, or challenging to quantify in objective terms. This inherent characteristic exacerbates the societal and political difficulty of perceiving the

gravity of the phenomenon, thereby contributing to institutional inertia, leniency in enforcement, and even impunity.

According to the opinion expressed by Mihai Adrian Hotca, this category of crime poses an especially elevated social danger not only because it targets assets of public importance, but also due to the irreversible nature of the damages it causes, harms that continue to produce effects long after the unlawful act has occurred [3, p.83]. Thus, environmental crime affects not only the present, but also irrevocably compromises the future, undermining the ability of future generations to enjoy a healthy, balanced, and functional natural environment.

The Transnational and Organized Nature of the Phenomenon. This defining trait highlights the globalized dimension of environmental crime, transforming it into an especially complex type of criminality, one that cannot be effectively countered through the traditional means of domestic criminal justice. Specifically, this characteristic reflects the fact that environmentally harmful illegal activities are no longer confined to local or regional contexts. Rather, they are perpetrated, coordinated, and expanded through transnational networks that span multiple jurisdictions, involve diverse actors, and utilize sophisticated mechanisms for evading regulatory oversight. Consequently, this form of crime not only disregards national borders but actively exploits legal disparities, institutional weaknesses, and the deficiencies of international cooperation.

This phenomenon manifests concretely in activities such as the illegal trafficking of toxic and hazardous waste, often exported unlawfully from developed nations to poorer countries where environmental regulations are either more permissive or poorly enforced, alongside the illicit timber trade resulting from widespread and unauthorized deforestation, the trafficking of endangered species in violation of international treaties such as CITES, the clandestine extraction of mineral resources, particularly in conflict-affected zones, and the unauthorized discharge of pollutants into maritime or territorial waters. Such offenses typically involve the use of sophisticated transport channels, falsified documentation, corrupt officials, and financial transactions routed through offshore jurisdictions, placing them in close proximity to large-scale economic and financial crime.

According to data published by international organizations such as INTERPOL and the United Nations Environment Programme (UNEP), environmental crime has become one of the most profitable branches of organized criminal activity, generating estimated annual revenues between USD 110 and 281 billion [11, p. 12-16]. This figure places it fourth among the world's most lucrative criminal enterprises, following drug trafficking, human trafficking, and arms smuggling. The high profitability of such activities stems largely from low legal risks, due to incomplete legislation and weak sanctions, as well as from the difficulty of identifying perpetrators and conducting effective cross-border investigations. In this context, states with limited institutional capacity and fragile regulatory infrastructures become highly vulnerable, often serving as weak links in the chain of environmental criminal networks.

Moreover, the organized nature of environmental crime implies the existence of hierarchical structures, with clearly defined roles among members, the use of advanced technologies for communication, concealment, and logistical coordination, and the strategic integration of illegal conduct within ostensibly legitimate business operations, such as recycling companies, transport firms, extractive industry operators, or natural resource processors. This functional camouflage makes detection and evidence-gathering

exceedingly difficult. It is within this context that scholars refer to green corporate crime, which combines the economic interests of companies with the complicity of both public and private actors, thereby creating an enabling environment for systemic impunity.

Accordingly, the transnational and organized character of environmental crime demands a proportionate institutional response, including the strengthening of international regulations, the harmonization of national legislative frameworks, and the enhancement of operational cooperation among states, environmental agencies, judicial authorities, and international organizations. Only through a concerted, multidimensional approach can the infiltration of criminal networks into the legal economy be effectively prevented, and the rule of environmental law upheld on a global scale.

3) *Difficulties in detection, investigation, and prosecution.* These challenges constitute a core characteristic of environmental crime, conferring upon it a distinctive nature in comparison to traditional forms of criminality, due to its hidden, persistent, and technically complex features. First, it is important to note that most acts falling under this category do not manifest themselves in an overt, disruptive, or socially visible manner, such as street crime or violent offenses, but operate in a latent and insidious register, with effects that often become apparent only after a significant period of time. This results in a substantial temporal gap between the commission of the act and its discovery or public recognition, reducing societal pressure for sanctioning and facilitating the persistence of the phenomenon within zones of relative impunity.

Secondly, the detection of such offenses requires not only an enhanced capacity for observation and intervention on the part of the authorities, but also a specialized infrastructure equipped with advanced tools for monitoring, analysis, and evidence collection. The use of high-precision scientific methods, such as isotopic analysis, satellite mapping, toxicological testing, and systematic sampling of biological and geochemical indicators, becomes indispensable in establishing the causal link between the unlawful conduct and the resulting environmental damage. The absence of such instruments or the lack of technical expertise often leads to delays in investigations, superficial conclusions, or even the inability to build a legally sustainable evidentiary case.

Additionally, the complexity of the causes and contexts in which these acts occur, often requiring cooperation among multiple institutional actors, including environmental inspectors, criminal investigation bodies, specialized laboratories, and judicial authorities, calls for a high degree of interinstitutional coordination. In practice, the absence of such cooperation results in overlapping competencies, procedural confusion, omission of key evidence, and a lack of coherence in the institutional response.

Moreover, the long-term manifestation of the effects, which in some cases are irreversible, necessitates a longitudinal approach to criminal proceedings, including repeated monitoring and ongoing reassessment of the damage. In many instances, the environmental harm cannot be immediately quantified or expressed in strictly economic terms, but instead requires complex ecological, sanitary, and social evaluations, which complicate the precise determination of damage and, consequently, the individualization of sanctions. These issues create not only technical but also legal obstacles, given that all evidence must comply with procedural requirements related to legality, relevance, probative value, and direct administration.

According to some authors, these difficulties are exacerbated in societies with low levels of institutional transparency, where the administrative capacity of investigative au-

thorities is limited or susceptible to corruption [2, p.254-256]. In such contexts, investigations are often blocked, redirected, or prematurely closed, and responsibility becomes diluted across networks of complicity and economic interests. Furthermore, in certain cases, the authorities responsible for environmental protection may be subject to political or economic influence, thereby undermining the objectivity of fact-finding processes and drastically reducing the effectiveness of judicial intervention.

Therefore, the difficulties in detecting, investigating, and prosecuting acts that constitute environmental crime are not merely procedural in nature, but reflect a systemic vulnerability that undermines the state's ability to guarantee both a healthy environment and an equitable system of justice. In this regard, the institutional response must necessarily include measures to strengthen the technical capacity of authorities, the professional training of personnel, the reinforcement of interinstitutional cooperation, and the ensuring of real independence for the entities charged with environmental oversight and enforcement.

4) *Systemic and long-term effects.* The systemic and long-term effects of environmental crime represent a key feature that fundamentally differentiates it from other forms of criminal behavior. Unlike conventional crimes, whose consequences are typically immediate, localized, and temporally limited, environmentally harmful acts produce cumulative effects by their very nature, effects that progressively intensify and often cause irreversible damage to ecosystems.

Soil pollution, contamination of water resources, toxic atmospheric emissions, or the destruction of natural habitats do not always trigger immediate social or institutional responses. However, their impact becomes increasingly visible over the medium and long term through biodiversity loss, rising incidence of environmentally induced diseases, and the acceleration of extreme climate phenomena. In this context, the resulting damage is all the more difficult to estimate as it involves complex ecological interdependencies and simultaneously affects multiple domains, from agriculture and public health to the economy and food security.

The latency of these effects contributes to an underestimation of the actual social threat posed by environmental crime and diminishes the capacity of the criminal justice system to react in a timely manner. According to the specialized literature, in certain situations, the magnitude and persistence of the consequences of ecological crime significantly exceed the harms produced by classical offenses. This reality, naturally, calls for a re-evaluation of priorities in prevention and sanctioning policies [2, p. 258].

5) *The necessity of an interdisciplinary and interinstitutional approach.* The need for an interdisciplinary and interinstitutional approach has become increasingly urgent in the current context marked by the intensification of environmental crime. This category of criminality cannot be addressed in isolation, as it involves complex interactions among legal, ecological, economic, and administrative factors. Certainly, criminal law alone is insufficient to manage a phenomenon of such breadth and interconnectivity, which is why the involvement of other areas of expertise is essential.

For instance, the assessment of ecological damage requires advanced scientific competencies in ecology and environmental geography, while evaluating the economic impact of resource degradation demands specialized analyses in finance and agriculture. At the same time, the implementation of remediation and prevention measures often falls under the responsibility of public administration and regulatory authorities. Thus, only

through the joint effort of institutions involved in justice, environmental protection, public health, economic oversight, and sustainable development policy can a coherent and effective institutional response be achieved.

In addition, the transnational dimension of this phenomenon requires active cooperation among authorities from different countries, including through specialized European and international networks. Only an integrated vision, based on information sharing, best practices, and coordinated strategies, can effectively counter the systemic threat that environmental crime poses at the global level.

Conclusions. In light of the issues discussed, environmental crime emerges as one of the major challenges of the 21st century, situated at the crossroads of justice, ecology, security, and sustainable development. Due to its inherently multidimensional nature, this phenomenon transcends the classical boundaries of criminal law, requiring a profound rethinking of the legal, institutional, and criminological tools used to address it. What we are confronting is not merely a series of normative violations, but rather a systemic mechanism of degradation of the common natural heritage, with grave and often irreversible consequences for public health, ecological balance, and intergenerational equity.

Accordingly, the rigorous definition of environmental crime, the identification of its specific characteristics, and the recognition of its transnational and organized dimension are indispensable steps toward the development of an effective criminal justice policy and the formulation of coherent strategies for prevention and intervention. Criminal legislation must be continuously harmonized with international standards and adapted to emerging ecological realities, while institutions tasked with oversight and enforcement must be equipped with appropriate technical resources, expert knowledge, and operational independence.

Furthermore, the effective combat of environmental crime requires an integrative approach, wherein interinstitutional cooperation and interdisciplinary dialogue between legal, ecological, and social sciences become operational norms rather than exceptions. Environmental protection must move beyond the logic of post-factum sanctions and instead become a major public policy priority, expressed through proactive strategies, environmental education, corporate accountability, and civic engagement.

In conclusion, environmental crime can no longer be treated as a secondary or peripheral issue within the criminal justice system. It must be addressed as a strategic threat, comparable to the most serious forms of organized crime. The strengthening of the regulatory framework, the enhancement of institutional capacities, and the cultivation of an ecocentric legal culture represent, naturally, priority directions in the collective effort to safeguard the environment and defend the fundamental right to a healthy environment.

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SUBJECTS AND OBJECTS OF THE PUBLIC DOMAIN IN THE REPUBLIC OF MOLDOVA

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Summary

The selected theme mainly obeys the legislation of the Republic of Moldova, because we have a doctrine that is poor in administrative law. Thus, the subjects of the public domain were identified, as well as the object of the public domain – resulting from a series of legislative acts. During the examination, in this research were identified two categories of subjects of the public domain, which constitute: the state and the administrative-territorial units; and, of course, also the subject of the public domain – which constitutes a list of categories of goods. Within each act the legislator refers either directly or indirectly to two identifiable subjects, to whom he delegates express attributions in the administration of public domain goods. It also describes the exhaustive characters of the public domain goods (imprescriptible, unnoticeable and inalienable), but also how to manage them, taking accountancy, etc.

The importance of the topic addressed is primarily in the absence of thorough research by the administrative law doctrinaires, and if we refer to daily situations, we find that each of the citizens of the Republic of Moldova interacts with this field, even the simple movement on a street indicates the person's contact with the public domain object, which in fact is either in the administration of the state or in that of the administrative-territorial unit (that is, of the subjects of the public domain).

Keywords: public domain, subject of public domain, object of public domain, state, administrative-territorial unit.

Introduction. The public domain has always been a poorly researched institution in the legislation of the Republic of Moldova. Other times – confused with public property. It is natural to start from this objective consideration and to investigate in detail whether it is correct to put the sign of equality between these two notions or to delineate them.

The public domain within the legislation of the Republic of Moldova is approached from several points of view, perhaps even under different expressions, often interpretable – fact that reveals the idea that there is no uniqueness in offering clear and concise definition in this regard. This is why the topic is as topical as possible.

The problem of the subjects of the public domain is an important one, because they evaluate as parties to the administrative-legal relations, that is, they perform the tasks and functions of the executive, competent coordination, provision, control and supervision power in the field of public administration [1, p.77].

In literature, especially in the native one, we can often encounter the notion of the subject of administrative law related to the meaning of the subject of the public domain. In Romanian literature we can more often encounter the notion of a subject of the public domain or of a subject of public property. This uncertainty of the Moldovan doctrine is caused by the insufficiency of the research of the given field, although the public domain

is an indispensable part of everyday life, because every time a subject of a legal relationship leaves his private property, he interacts with an object of the public domain (he walks on a public road, be it local, regional or national; crosses a bridge of a UAT etc.) which is managed by a subject of the public domain.

The question of the criteria that can be used to determine the goods subject to public property has been controversial. In the current legal literature it has been shown that these criteria are the determination of goods by law and the destination of goods, which can be no other than public use or utility [2, p.44].

Methods and materials applied. In the framework of the research of this paper, the logical method (which is closely related to the historical method, obviously) was applied – a widely used method in any scientific research. Thus, the research took place primarily through the use of laws – Civil Code of the Republic of Moldova No.1107/2002 [4]; Law No.121 of 04.05.2007 on the administration and de-etatization of public property [5]; Law No.523/1999 on public ownership of administrative-territorial units [6]; Law No.29 of 05.04.2018 on the delimitation of public property [7] – using the categories of logic. The above-mentioned laws provide the definition that offers us the clarity in the actual research of the subject. The analysis applying the decomposition of a whole into its component elements and the study of each of them, such as the research of the normative acts listed above and the extraction of the rules that relate specifically to the subject and subjects of the public domain. In fact, in this particular work this method prevails, as in any other related to administrative law, branch still poorly developed in the Republic of Moldova.

Discussion and results obtained. As in the Romanian literature and legislation, which constitute the source of the right respectively of the public domain, in the Moldovan one we identify two categories of subjects of the public domain, which constitute the state and the administrative-territorial units.

No other subject of law may be the owner of the right of public property but may have, at most, rights derived from it, such as the right of administration [2, p.56].

It is important to note that the state as owner of public domain assets exercises its rights and obligations through the following entities: Government, line ministries or through specialized bodies of central public administration subordinated to the Government or competent ministries, as the case may be, for goods belonging to the public domain of the state.

Administrative-territorial units as a subject of the public domain represent the deliberative bodies within them – local and/or district councils.

The nominated subjects we identify and deduce (in addition to doctrine) primarily from national law. Thus, Law No.121/2007 on the administration and de-etatization of public property, under Article 1 (2) expressly provides the following: "Under the incidence of this law are: public property of the state and public property of the administrative-territorial unit, except for public finances and housing. This exception does not cover homes that are owned by the State as a result of the vacant inheritance" [5].

The same Law, in Art.2 (General notions) provides for the notion of public property – "of the total public domain assets and private domain assets of the state, of the administrative-territorial units, including of the autonomous territorial unit of Gagauzia".

Therefore, even if the above-mentioned law does not expressly appoint subjects who have the right to own the public domain, by the notions offered, however, it identifies

them as the state and the administrative-territorial units.

Law No.121/2007 on administration and de-etatization of public property, during the act refers often to the state and the administrative-territorial unit as subjects of the public domain, with reference to its attributions and competences regarding the public domain object, which we will identify below.

The law No. 523/1999 on public property of administrative-territorial units, even from the title of the normative act identifies the administrative-territorial unit as a subject of the public domain. Subsequently, starting with the provisions of Article 1, constant references to UAT are recorded. Particularly worth noting are the provisions of paragraphs (1)-(3) which stipulate: (1) Public property of administrative-territorial units is one of the forms of public property; (2) The public property of the administrative-territorial units is constituted by the patrimony belonging to the respective administrative-territorial units: village, commune, city, municipality, district, autonomous territorial unit Gagauzia; (3) The patrimony of administrative-territorial units consists of public domain goods and private domain goods [6].

In accordance with the provisions of Article 4 of the Law No.436/2006 on local public administration "the administrative-territorial unit is a legal entity of public law and has, according to the law, a distinct patrimony from that of the state and other administrative-territorial units" [8].

Based on these provisions, the legislator also identifies the state and the administrative-territorial units as subjects of the public domain. Moreover, it also refers to the existence of a distinct patrimony.

The Law No.29/2018 on the delimitation of public property, in its turn notes in Article 1 that "its purpose is to strengthen the legal framework for the delimitation of public property, the insurance of the right of ownership and the efficient use of public property of the state, public property assets of the first and second level administrative-territorial units including the autonomous territorial unit of Gagauzia (hereinafter referred to as administrative-territorial units); regulates the legal regime applicable to public property, the competences of the Government and of the central and local public administration authorities in the process of delimitation of public property; applies to relations between central and local public administration authorities in the process of delimitation according to the belonging of immovable property public property". Article 2 of the same Law, for the proper application of this, provides for the notion of central "public administration authorities specialized – authorities managing state public property in various fields, including in the fields of health, culture, education, objectives and land in the water fund or in the forest fund, land related to terrestrial communications paths, land as well as other land likely to be affected by decisions taken on the delimitation of public property" [7].

Therefore, the respective Law already directly identifies the entities through which the state – the authorities of the central public administration specialized, that is, the ministries, according to the field of activity (health, culture, education, etc.).

Also, both the Government Decision No.136/2009 on the approval of the Regulation on tenders with a cry and a discount, as well as the Government Decision No.901/2015 on the approval of the Regulation on the way of transmission of public property goods, in its exposures on the management of public domain goods makes, express references as subjects of the public domain to administrative-territorial units, as well as the state or its representative entities, such as: the Public Property Agency, the State Tax Inspectorate,

the Ministry of Finance, the Ministry of Economic Development and Digitalization.

And last but not least, the supreme law Constitution of the Republic of Moldova expressly provides in Article 127 (3) that "public property belongs to the state or administrative-territorial units. Obviously, the subjects identified by the legislator are the state and the administrative-territorial units" [3].

Subjects nominated over are those who have the right and obligation to administer public goods – which are the object of the public domain.

To begin with, we consider it appropriate to mention the constitutional provisions in Article 9 (1) as: "Thus, in the case of the public domain, obviously, it is assigned the goods of public property".

The Civil Code of the Republic of Moldova expressly stipulates in Article 471 that "the goods belonging to the state or administrative-territorial units are part of the private domain if, by law or in the manner established by law, they are not registered in the public domain. From the public domain of the state or of the administrative-territorial units belong the goods determined by law, as well as the goods which, by their nature, are of public use or interest. Public interest involves affecting the good to a public service or to any activity that meets the needs of the community without assuming its direct access to the use of the good according to the mentioned destination. Subsoil riches of any kind, airspace, waters and forests used for public interest, natural resources of the economic zone and continental shelf, means of communication, as well as other goods established by law, are the exclusive object of public property. Public domain assets are inalienable, unnoticeable and imprescriptible. The ownership of these goods is not extinguished by non-use and cannot be acquired by third parties through usucapion" [4].

So the Civil Code expressly names the goods belonging to the two subjects of the public domain – the state and the ATU. Moreover, the legislator also uses the term public domain instead of public property, which is more widespread in most legislative texts.

Law No.436/2006 on local public administration, taking into account the fact that it refers more to the functioning of a local public authority, does not provide for an appointment and/or enumeration of what constitutes the public domain, but it refers to its existence through the provisions of the basic competences of local public authorities, such as Article 14, paragraph (2): "manages the assets of the public and private domain of the village (commune), city (municipality); decides on the legal acts of administration regarding the assets of the public domain of the village (commune), city (municipality), as the case may be, as well as on the public services of local interest, according to the law, etc" [8].

The Law No.121/2007 on the administration and de-etatization of public property, taking into account its scope, already identifies the object of the public domain. Thus, the first two definitions in Article 2 of the law provide: public property – the total of the public domain assets and the private domain assets of the state, of the administrative-territorial units, including the autonomous territorial unit Gagauzia; goods of the public domain of the state – the totality of movable and immovable property intended to satisfy the general interests of the state [5].

In this context, we consider important to mention the legislative loophole referred to the second exposed notion, because even if at public property the legislator indicates the totality of certain goods of the state and of the administrative-territorial units – that is, it identifies the existence of two categories of subjects. At the second notion, from the

start (and we think wrongly) it offers the notion of goods of the public domain only of the state, not including the administrative-territorial units without which the existence and proper functioning of the state is impossible.

Next, references are made to the attributions of the state and administrative-territorial units on how to manage public domain assets. However, this law also has an annex, in which we identify an exhaustive list of public domain goods that are not subject to privatization. Thus, the 133 goods in the annex constitute the same object of the public domain.

Similar references are found in the Romanian legislation where in the Romanian Administrative Code under Art.286 expressly indicates that "the Public Domain is made up of the goods provided for in Article 136 (3) of the Constitution, of those set out in Annexes No.2-4 and of any other goods which, according to the law or by their nature, are of use or public interest and they are acquired by the state or by the administrative-territorial units by one of the ways provided by law".

The annexes (to the Administrative Code of Romania of 03.07.2019, an integral part of the Emergency Ordinance 57/2019) mentioned in that article contain lists of some goods belonging to the public domain of the state/county/commune, city or municipality. However, the Romanian legislator considered important to mention in each annex that they have an exemplary character – thus avoiding certain situations where a good could belong to the state/territorial administrative unit but because of the (exhaustive) too rigid provisions of the annexes would automatically decline, because they would not be found in those lists.

The above expositions denote the broader vision of the Romanian legislator on the identification of the goods that constitute the object of the public domain. We would like to mention that we actually welcome their systematization in one act, which makes it possible to apply the legislation of the public domain correctly and more easily. All the more, the lists referred to above identify practically all types of goods which constitute or could be the subject of the public domain.

Taking into account the scope of the Law No.523/1999 on public ownership of administrative-territorial units, and according to the provisions of Article 1 of the law, the object of the public domain of the UAT is identified as the patrimony of administrative-territorial units, and which consists of all movable and immovable assets, intended to satisfy the general interests of the community in the administrative-territorial unit.

Below, the legislator, indirectly, makes an identification of what constitutes the public domain of the UAT, by the following exposition in paragraph (6): "all movable and immovable property, located on their territory until the entry into force of the Law on administrative-territorial organization of the Republic of Moldova, except for the assets that were owned by the state and privately owned". So, in 1999 the law established that all goods located in the territory of an administrative-territorial unit existing in kind, but not expressly assigned, by the existence of a confirmatory act as belonging to the state (the other subject of the public domain) or assigned to private property – are declared as belonging to that administrative-territorial unit where they were found/identified.

And even if the nominated law is approved in 1999, its validity extends today, due to the still confusing situation in the public domain, but especially the land in the public domain, where today, we find land belonging to the state or an administrative-territorial unit that is not registered after them in the Register of Real Estate Goods, are not taken

to the accounting of the responsible institution and, respectively, the falls to some extent at risk of loss of ownership due to the mismanagement of heads of state/UAT entities or their devaluation – being allowed to degrade or not being redeemed (which implies obtaining revenues in the state budget/UAT as a result of lease/location/superficiency).

An express enumeration of the above-mentioned law is present in Article 3, which specifies the categories of goods that constitute the objects of the public property right of the administrative-territorial units, which are: a) The goods of the enterprises and local budgetary institutions with a social-cultural character: education, health care and culture (including technical-scientific, technological and other information), as well as with the form of public property; b) The goods of local enterprises with the form of public property, as well as the fixed share of the statutory capital of enterprises with the form of joint and joint ownership, belonging to the subjects of the entrepreneurial activity in the sphere of industry, agriculture, construction, transport, procurement, trade, communal and social services and other areas; c) The goods of local public authorities and of the administration of administrative-territorial units land intended to meet the needs of administrative-territorial units, means of budgets of administrative-territorial units (including special means and funds), securities, housing stock (except for the private, cooperative, public associations and dormitories), objects in technical infrastructure and other objects that are located on the territory, except for cases provided by legislation the necessary assets for the economic and social development of the administrative-territorial unit and for the performance by the local public administration authorities of the tasks incumbent upon them in accordance with the legislation on local public administration.

Thus, even if it does not provide an exact list of goods, as in the case of the annex to one of the laws mentioned above – indicates the categories of goods that are the subject of the public domain and that are identifiable, if necessary.

As mentioned above, Law No.436/2006 on local public administration, in Article 4 provides for the existence of a patrimony of an administrative-territorial unit, but also of the state (expression deduced from the legal provision). Therefore, the text of the law identifies the attributions of the local public authority (both executive and deliberative) with reference to the exercise of the powers of the authorities in the administration/management of public domain assets (Art.14 para.(2) letter b), c), e); Art.29 para.(1), letter a1), f), g), h); Art.39 para.(1) let. o); Art.43 para.(1) letter c), d), d1), g), r); Art.53 para.(1) letter a1), i), m1), etc.) [8].

The law also contains a chapter dedicated to services, goods and public works. Thus, in accordance with the provisions of Section 2 of Chapter X of the above-mentioned law, the legislator regulates the administration of public goods. Moreover, Article 75 expressly indicates that: (1) In the public domain of the administrative-territorial unit belong to the goods determined by law, as well as to the goods which, by their nature, are for use or of local public interest. The public interest implies affecting the good to a public service or to any activity that meets the needs of the community, without assuming its direct access to the use of the good according to its destination; (2) In the category of goods of the public domain of local interest may be reported the land on which are located constructions of local public interest, basement areas, roads, streets, markets, separate aquatic objectives, public parks, sports fields, stadiums, as well as playgrounds for children delimited and registered according to the legislation in force, buildings, monuments, museums, forests, protection areas and sanitary areas, other objectives that, according to the law, can be do

not belong to the public domain of the state; (3) Public domain assets of local interest are inalienable, imprescriptible and unnoticeable.

Based on the ones set out in Article 75, the following categories of goods are identified that are part of the public domain object:

1. Goods determined by law – those goods expressly mentioned by the legislator as being of the administrative-territorial unit;

2. Goods which by their nature are of local use or public interest – of its meaning is understood to indicate on a category of goods which are naturally public, and their existence in private salmon is impossible: local roads, local market, playgrounds and sports, monuments, etc.

Another legislative act of major importance in the research of the topic is the Law No.29/2018 on the delimitation of public property. In Article 2, it provides for the notion of public domain goods, which by their nature or by the declaration of the law, are of public use or interest and which belong to the state or to the administrative-territorial units. In Article 4 (2), the legislator repeatedly notes the same provision regarding public domain goods. In fact, even if it does not combat the notion, its repetition in another article in the same law we consider it to be meaningless [7].

However, we would like to note the idea that the provisions of Article 5 of the said law are very important. Given that in the proper administration of goods, public domain subjects need to draw clear notions regarding the legal regime of public domain assets; especially their identification as inalienable, unnoticeable and imprescriptible.

Also, the same law mentions the acts of a device character regarding the public domain assets, namely: the Government decision, the decision of the local council/popular Assembly of the autonomous territorial unit of Gagauzia; and any action in this respect is carried out in strict accordance with the provisions of the Law No.287/2017 on accounting and financial reporting.

Subsequently, Law No.29/2018 on the delimitation of public property, dedicates Chapter II to public property, where it is mentioned what constitutes public property of the state, public property assets of administrative-territorial units.

A similar categorization of public domain assets, as in the Administrative Code of Romania (mentioned previously in this paper) is found in paragraph (2) of Art.9 and paragraph (2) of Art. 11 of the nominated law, that provides a list similar to the Romanian one, only it is separated between the two subjects of the public domain: the state and the administrative-territorial units; while the Romanian legislature in its annexes separates into 3 categories (as if identifying three subjects of the public domain): the state; the county and the commune/city or municipality.

We do not intend to criticize the choice of our legislator to divide the list of public domain assets between the state and the administrative-territorial units, because the unstable political situation, since the Declaration of Independence has also demonstrated the instability of the borders of the administrative map of the Republic of Moldova. Thus, if in Romania the types of ATUs are clearly identified, in the Republic of Moldova, but especially in the current context of administrative reforms, with the adoption of Law No.225 of 31.07.2023 on voluntary amalgamation of administrative-territorial units – still follows the modification of the UAT boundaries, maybe even of their types.

Conclusions. The purpose of the topic addressed was to identify the subjects and the object of the public domain. We believe that these aspects have been elucidated –

within the existing legislative framework. Thus, two categories of public domain subjects were identified, which constitute the state and the administrative-territorial units. If the administrative-territorial units exercise directly their attributions in the administration of the public domain object – either through the deliberative body (local or district council of the unit) or through the executive body (mayor/mayor; district president/area president apparatus); then the state exercises its rights and obligations in the management of public domain assets through several entities: the government, respectively central public administrations (made up of ministries according to the field of activity) and other institutions/agencies/inspectorates/etc. created for the purpose of good administration of the public domain object.

With reference to the subject of the public domain, the normative framework identifies for each category of subject the list of goods assigned to them for administration. The legislation also provides for the way they are administered. All this is most welcome, but the dispersion of notions, attributions in several normative acts; some shortcomings in certain notions offered by the legislator makes their identification for application quite complicated for practitioners. When there is a need to apply a notion in order to solve a concrete case, the legislator does not identify a single notion, but has formulations with slight deviations in each act. Although, we believe, that the closest thing to the truth and reality are the provisions of the Law No.121 of 04.05.2007 on the administration and de-etatization of public property, as well as the Art.471 of the Civil Code of the Republic of Moldova No. 1107/2002, as they were investigated and exposure above in the present article.

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PREVENTING AND COMBATING CONTRAVENTIONS IN THE FIELD OF ELECTRONIC COMMUNICATIONS: MECHANISM AND CONDITIONS OF REALIZATION

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Summary

The National Agency for the Regulation of Electronic Communications and Information Technology (ANRECIT) is the authority that currently regulates the activity in the electronic communications, information technology and postal communications sectors in the Republic of Moldova. This authority plays a central role in ensuring compliance with the legal framework for electronic communications. This study examines ANRECIT's attributions and competences as a regulatory authority, as well as the typology of offenses attributed to this authority. The article emphasizes the importance of ANRECIT's activity in preventing and combating contraventions through the application of control mechanisms, the detection of contraventions and the application of sanctions. The main purpose of the article is to emphasize the importance of ANRECIT's activity as a regulatory authority in the field of electronic communications, information technology and the role of this authority in preventing and combating contraventions in the area of its competence. In order to achieve this goal, we have set the following objectives: to analyze ANRECITs attributions and competences as a sanctioning agent, to identify the categories of contraventions sanctioned by the authority, and to present the necessary conditions for the efficient performance of the sanctioning activity. The paper emphasizes the importance of ANRECIT's activity not only in the application of sanctions, but also in the prevention of unlawful behavior, through a consistent regulatory framework and effective control and supervision tools.

Keywords: contraventions, electronic communications, ANRECIT, enforcement agent, powers, prevention, sanction.

Introduction. Preventing and combating infringements in the field of electronic communications is a key priority for ensuring a functional and efficient communications sector in the Republic of Moldova.

The National Agency for the Regulation of Electronic Communications and Information Technology, (Romanian abbreviated – ANRCETI) is an authority that currently regulates the activity in the electronic communications, information technology and postal communications sectors in the Republic of Moldova, ensures the implementation of the development strategies of the nominated sectors and supervises the compliance with the legislation in the field by the providers in the electronic communications, postal services [1] and information technology markets. ANRCETI has the competence to manage, regulate and monitor the electronic communications and information technology sector in the Republic of Moldova, in accordance with national legislation and applicable international regulations.

Discussions and results obtained. *The legal framework, which regulates* ANRCETI*'s competence as a regulatory authority*. Among the regulations, which govern the activities

in sectors relevant to ANRCETI's activity as a regulatory authority, are: Law No.241 of 15.11.2007 on electronic communications [2]; Law No.36 of 17.03.2016 on postal communications [3]; Law No.28 of 10.03.2016 on access to property and shared use of infrastructure associated with public electronic communications networks [4]; Law No.162 of 22.06.2023 on market surveillance and product compliance [5]; Regulation on the organization and functioning of the National Agency for Regulation of Electronic Communications and Information Technology approved by Government Decision No.643 of 17.12. 2019 [6]; Government Decision No.284 of 13.04.09 approving the Rules on the protection of electronic communications networks and the execution of works in protection zones and on the routes of electronic communications lines [7]; Regulation on the provision of public electronic communications services, approved by ANRCETI Decision No.48 of 10.09.2013 [8]; Decision No.5 of 14.03.2017 on the implementation of the powers of the National Agency for the Regulation of Electronic Communications and Information Technology in contravention matters [9] approved by the Administrative Council; Contravention Code of the Republic of Moldova No.218 -XVI of 24.10.2008 [10, Art.410].

Law No.241/15.11.2007 on electronic communications [2] regulates electronic communications services and liability for non-compliance with legal obligations, such as: abuses of monopoly, violation of terms and rules for interconnection of networks, misuse of frequency resources, or misuse of requirements for the protection of users' personal data, violation of quality of service rules, compliance with contractual terms or provision of incorrect information to consumers.

Another normative act is the Law on postal communications No.36 of 17.03.2016 [3], which regulates activities in the field of postal communications, general authorization regime and provides sanctions for violation of mail delivery rules, failure to meet delivery deadlines, security of postal items, protection of personal data and or abuses related to postal tariffs. ANRCETI's role is to ensure compliance with this legislation, and to check and apply penalties in the event of infringements.

A particular importance has Law No.28 of 10.03.2016 on access to property and shared use of infrastructure associated with public electronic communications networks [4], which regulates how electronic communications network operators can have access to private or public property to install, maintain or expand the infrastructure necessary to provide communications services, as well as the shared use of existing infrastructure. The main purpose of this law is to support the development and expansion of the communications infrastructure, while respecting property rights and other legal regulations.

According to Law No.162 of 22.06.2023 on market surveillance and product conformity [5], it regulates the mechanisms for monitoring and control of compliance with quality and safety standards of products, which are placed on the market in the Republic of Moldova and aims to protect consumers, ensure a competitive market environment and reduce the risks associated with the consumption of unsafe or non-compliant products. The regulations are based on European standards and aim to ensure that marketed products comply with essential health, safety, environmental protection and consumer rights requirements, and state authorities are responsible for monitoring products placed on the market to ensure that they comply with the technical, safety and environmental protection requirements laid down in national and European legislation. The law imposes a direct responsibility on economic operators (producers, distributors and importers) to comply with safety and quality standards, to ensure that their products comply with all

conformity and safety regulations before being placed on the market, thereby reducing risks to consumers. In addition, obliging them to keep the relevant documentation and to cooperate with the authorities in the event of a control ensures a more transparent and efficient framework for product control, facilitating the rapid identification of possible infringements.

Pursuant to Art.8 paragraph (7) of the Law No.241 on electronic communications [2] was adopted Regulation on the organization and functioning of the National Agency for the Regulation of Electronic Communications and Information Technology, being approved by Government Decision No.643 of 17.12.2019 [6], which regulates more detailed aspects of the implementation of the legislation on electronic communications and the application of measures aimed at improving transparency and user protection in the field and provides measures to support the effective implementation of the regulations of the mentioned Law.

At the same time, the Council of Administration approved Decision No.5 of 14.03.2017 on the implementation of ANRCETI's competences in contravention matters [9], which regulates the Agency's powers in relation to the establishment and sanctioning of contraventions in the field of electronic communications and information technology, being responsible for the application of sanctions and corrective measures in case of violation of the regulations in the area concerned, which includes the establishment of clear procedures for the establishment and sanctioning of contraventions. ANRCETI is vested with the responsibility to carry out controls, investigations and inspections to ascertain possible breaches of regulations, and detailed procedures are established for these controls to ensure a transparent and fair process.

The Government Decision No.284 of 13.04.09 approved the Rules on the protection of electronic communication networks and the execution of works in protection zones and on the routes of electronic communication lines [7], which regulates the way in which works can be executed near or on the routes of electronic communication infrastructure, with the main purpose of protecting these networks and ensuring the continuity of communication services. In the event of failure to comply with the provisions of the Decision, penalties are laid down for those who carry out unauthorized work or who fail to comply with the regime for the protection of communications networks. This is essential to ensure the enforceability of the regulations and to discourage behaviors, which may endanger critical infrastructure. Infrastructure protection measures are essential to maintain the continuity of electronic communications services given society's increasing dependence on them.

Regulation on the provision of public electronic communications services, approved by ANRCETI Decision No.48 of 10.09.2013 [8], regulates the relations between communications service providers and users, establishing clear rules on the provision, accessibility and protection of consumer rights, among which the obligation of electronic communications service providers to provide services of adequate quality and ensure their accessibility for all users, including persons with disabilities, i.e. the provision of services under conditions of continuity, quality, transparency and respect for consumer rights; the imposition of transparency and detailed information requirements for users prior to the conclusion of a contract, i.e. the provision of full information on the characteristics and conditions of services, including tariffs, billing, termination periods, other essential conditions; safeguards for vulnerable users, protection against aggressive commercial practices or unforeseen costs.

ANRCETI has specialized staff made up of experts in the field of information technologies, European legislation and regulations, as well as financial resources to implement these regulatory and sanctioning mechanisms by carrying out inspections and applying corrective measures. At the same time, ANRCETI collaborates with international and national institutions to ensure a coherent system of regulation of electronic communications, including partnerships with regulators in other countries and international organizations, in order to prevent and combat cross-border infringements.

In accordance with the provisions of Article 410 of the Contravention Code of the Republic of Moldova [10], ANCETI detects and examines various contraventions in the field of electronic and postal communications provided for in Art.84, 246-259[2], Art. 273 paragraphs (1), (4), (6), (10), (11), Art.278 paragraphs (l), (2), (4), (5), Art.279-281, Art.283 paragraph (1) and Art.344 of the Contravention Code. These rules are essential to ensure the correct and regulated functioning of telecommunications and postal systems, as well as to protect the rights of users and good practices in this sector.

As a basis for initiating infringement proceedings are irregularities detected during ANRCETI inspections/controls and complaints received from providers of electronic communication networks and services such as "Moldtelecom" JSC, "Orange Moldova" JSC; public order enforcement bodies such as Police Inspectorates, Prosecutor's Office; other institutions as the Audiovisual Council, the Public Institution "National Radio Frequency Management Service", etc.

In accordance with the legislation in force, ANRCETI, as a regulatory authority in the field of infringements, has the power to settle consumer complaints and ensure the protection of end-users' rights, to carry out inspections and checks, to monitor and ensure compliance, to identify and report infringements in order to take the necessary action to prevent and eliminate non-compliance with the legislation and regulations in the field of electronic and postal communications.

According to the provisions of Article 10 paragraph (3) of the Law No.241 on electronic communications [2], ANRCETI is responsible for identifying, verifying the facts that constitute contraventions and finding violations of legal regulations in the respective field, these are achieved by carrying out periodic controls and inspections of operators of electronic communications, postal and IT services to identify irregularities and deviations from the legal regulations established in the given fields, checking compliance with quality standards of services, activities of operators and service providers and identifying possible violations in order to prevent abuses. This may include checking the manner in which services are provided, compliance with general authorization conditions, compliance of contracts with legal provisions, compliance with technical and quality standards, compliance with consumer protection rules, ensuring the security of postal networks and mail items, the quality of the postal services provided, compliance with the rules in force, etc. Inspections may be planned or carried out following complaints received from consumers or other organizations.

At the same time, ANRCETI verifies compliance with the provisions of the Regulation on the provision of publicly accessible electronic communications services, approved by the HCA of ANRCETI No.48/2013 [8], as amended, a regulatory act, which establishes a specific set of rules for the protection of the rights of users of electronic communications services and, according to which, any end-user is entitled to claim from the provider to remedy deficiencies that have arisen in the provision of the contracted services, by filing a complaint. In case the user is not satisfied with the actions (inactions) of the provider on

the complaint, by virtue of the Administrative Code No.116/2018, he (the user) may make use of the right to file a petition to the regulatory authority or to address the competent court.

Article 13 of the Law No.241/2007 on electronic communications [2, Art.13] of the Republic of Moldova, regulates the actions of the Agency for the Protection of Users of Electronic Communications Services, facilitating a regulatory framework that ensures transparency, problem solving and support. This reflects the Agency's role in creating a legal framework adapted to the needs and challenges of the electronic communications sector, with responsibility for examining and resolving user petitions, such as complaints related to quality of service, billing problems or infringement of user rights by providers.

Thus, *measures to prevent and combat electronic communications offenses include*: monitoring the market and the activities of operators, regular controls, examination of complaints received from end-users, verification of compliance with technical standards and quality of services, development of clear and binding regulations for all operators in the sector including on licensing of operators, establishment of transparency and information obligations, cooperation with other authorities and institutions, including police, prosecutor's office and international bodies, checks of public services, conducting consumer information companies, trainings, information sessions or recommendations for improving compliance practices for operators, as well as enforcement of fines or other corrective measures.

By closely monitoring compliance and applying appropriate sanctions, the Agency contributes to creating a stable business environment and protecting the interests of consumers and service providers.

After finding infringements, ANRCETI may apply sanctions proportionate to the seriousness of the infringement, ranging from warnings and financial fines to more severe measures, such as temporary suspension of activity or withdrawal/revocation of license. These sanctions are governed by the legislation in force, which sets out clear procedures for each type of infringement and are designed to discourage illegal behavior and protect consumers. ANRCETI is required to draw up minutes when it finds infringements, documenting violations and applying sanctions in a transparent manner in accordance with the legal rules, so as to avoid any abuse or subjective interpretation of the legislation.

The provisions of Article 10 of the Law on electronic communications [2, Art.10 para. (1) let. h), i), j)] regulate the rights and powers of the Agency in the field of sanctioning and monitoring the electronic communications sector, emphasizing the role of the Agency in ensuring compliance with the legislation in the field, protecting consumer rights and market integrity, as well as quality control of services.

The enforcement of penalties is an essential tool for maintaining order and compliance in the electronic communications sector, and the right to apply penalties enables the Agency to ensure compliance, thus creating a regulated and level playing field for all players in the sector.

It is important that these sanctions are applied fairly, equitably and proportionately to the infringements committed, and the sanctioning procedures must be clear and transparent to avoid any abuse or subjective interpretation by the authorities in order to protect the rights of all parties involved.

According to Art.410 para.(1), (3), (11) of the Contraventions Code, ANCETI ascertains and examines the contraventions provided for in Art.84, 246-259^2, Art.273 paragraphs (1), (4), (6), (10), (11), Art.278 paragraphs (1), (2), (4), (5), Art.279-281, Art.283 paragraph (1), and

Art.344, committed in the fields of activity falling within its competence. The heads of subdivisions and officials of the National Agency for Regulation of Electronic Communications and Information Technology, authorized by the Director or Deputy Directors of the Agency, shall be entitled to establish contraventions and to draw up minutes. The Director or Deputy Directors of the National Agency for Regulation of Electronic Communications and Information Technology shall have the right to examine cases of contravention and to impose sanctions [10, Article 410, para.(1), (3), (11)].

This provision regulates offenses related to the violation of regulations in the field of electronic communications, aiming to protect public order and ensure an appropriate legal framework for the activity of operators and providers of communications services. This article is set in a legislative context aimed at protecting the public interest, regulating relations between providers and consumers, and establishing sanctions for acts that may affect the proper conduct of activities in the field of electronic communications.

The direct object of the contraventions specified above derives from the content of each individual article and consists in the protection and regulation of activities related to electronic and postal communications, and is intended to ensure compliance with the technical, legal and regulatory rules applicable in this area. Thus, the contraventions described in the respective articles refer to the unauthorized or improper provision, use and access to communications networks and services, as well as to the violation of the regulations governing these activities.

The objective side of the contraventions refers to the concrete facts, to the prohibited behaviours stipulated by the law, such as: unauthorized provision of electronic or postal communication networks or services; failure to comply with the conditions of general authorization or license; unlicensed use of resources (radio frequencies, numbering resources); unauthorized creation or operation of communication equipment; violation of technical rules of electromagnetic emission; unauthorized connection to communication networks, etc.

The infringing act is manifested by concrete conduct that violates the legal regulations, through an action (e.g. offering a communications service without a license, unauthorized connection of terminal equipment or other means of electronic communications to electronic communications networks), an inaction (e.g, failure to provide the regulatory authority with information on the conditions of access to property and/or shared use of the physical infrastructure, failure to deliver postal mail within the legal deadlines) or a breach of specific legal obligations (such as failure to comply with the conditions laid down in general authorizations issued by the competent authority).

The subjects of contraventions may be any natural person who violates the regulations, or persons in a position of responsibility in an organization or institution who have managerial, decision-making or supervisory functions in an organization or institution and who can influence or control the activities of that organization or institution, or legal persons who, through their employees or infrastructure, may commit violations of regulations in the field of electronic communications, postal communications and information technology.

Thus, both legal persons (the companies providing these services) and the natural persons who occupy managerial positions within them may be liable for breaches of the legal regulations. Individuals may commit offenses, in particular in relation to the misuse of electronic communications networks or information technology services. For example, an individual who illegally manipulates personal data, or uses non-compliant equipment

to connect to electronic communications networks, or uses the internet for illegal activities (such as fraudulent access to computer systems).

At the same time, the subject of contraventions in the given field may be natural and legal persons who do not provide these services, for example in the case of carrying out construction works in the protection zones of electronic communications lines, cables and installations without the authorization of the owner of these lines, cables, installations, or violation of the rules of protection of electronic communications lines, unauthorized connection to electronic communication networks.

The subjective side in the case of contraventions provided in Chapter XIV can manifest itself in the form of intent as well as negligence. The person who commits the offense may act with intent, knowing that he is violating legal regulations, for example, an operator providing services without a license/authorization, or applying traffic management measures such as: discrimination, blocking, slowing down, modifying, or interfering in internet traffic acts with intent, or making and disposing of false postage stamps, franking cliches and postal seals. In other cases, the person may commit the offense by negligence, without intending to violate the law. Guilt may be present in situations where the act was not premeditated, but the person did not comply with the rules imposed by negligence or inattention (for example, failure to comply with technical regulations without intent to harm, recklessly damaging the line or electronic/ postal communication equipment; or an operator delaying the delivery of a postal service due to mismanagement of resources).

In conclusion, all these articles have a common purpose to protect the infrastructure and users of electronic communications and postal services, ensuring that they are regulated in a coherent and effective legal framework. Penalties are designed to discourage behaviour that could jeopardise network security or users ' rights and range from fines to deprivation of the right to conduct a particular activity.

At the same time, ANRCETI examines the contraventions provided in Art.84 of the Contravention Code [10], the subject of which constitute contraventions that threaten the life and health of the consumer caused by the production, placing on the market and/ or marketing of products and the provision of services dangerous to the life and health of the consumer. The provisions of this article refer to the sanctioning of persons who produce, place on the market or trade products and provide services dangerous to the life and health of consumers, contrary to the legal provisions. Thus, we will analyze the object, subject, objective side and subjective side of this contravention.

The object of the contravention is the protection of consumers, in particular their lives and health, by preventing the production, sale and marketing of products or services that may pose risks to them. The subjects of the contravention are natural persons, persons with a responsible position and legal persons, who by their actions (production, marketing, etc.) violate the legal provisions designed to protect public health. The objective side of the contravention implies the specific actions, which constitute the contravention Act, i.e. the production, placing on the market and marketing of dangerous products and services for consumers, under the conditions in which these actions contravene the legal regulations. These actions must be described in clear and precise terms, since any deviation from legal regulations can be sanctioned, regardless of the intentions of the authors. The incriminated acts are the production, placing on the market, the marketing and the provision of services dangerous to the life and health of consumers, the violation of the regulations established by the competent authorities, specifically those that regulate the safety of products and services on the market, and there is no need for the danger to have

materialized, but only for the risk to arise. The subjective side refers to the intention or recklessness with which the incriminated acts are carried out and in this case, it is not specified whether the acts must be committed with direct intent or if it can also be sanctioned in the case of an attitude of recklessness (negligence). Given that the law does not directly refer to elements of intent or guilt, penalties may also apply to acts committed recklessly.

The penalties are quite severe and are differentiated according to the nature of the person involved, i.e. natural persons can be sanctioned with fines between 60 and 90 conventional units; responsible persons (probably officials or officials within entities) risk fines between 180 and 240 conventional units; legal persons (companies or organizations) are sanctioned with fines between 210 and 300 conventional units and, in addition, can be deprived of the right to carry out commercial activities for a period of 3 months to one year. The complementary measure of business suspension is an effective measure, as it directly affects the operating capacity of a legal entity or a person in a responsible position, being a strong deterrent mechanism and can have a significant impact on the respective business, which is desirable in cases where consumer safety is endangered. Thus, the law acts as a tool to prevent risks and protect against dangerous products that could cause permanent damage to public health.

A possible shortcoming would be that the article does not clearly define what "dangerous products and services" mean, leaving this interpretation up to the competent authorities. In addition, no specific examples are given and the applicability of sanctions may vary depending on their interpretation by competent courts or regulatory authorities. However, a clear legal framework and uniform application of sanctions are needed to be effective in combating this type of behaviour.

At the same time, ANRCETI examines the contraventions provided in Chapter VII contraventions that threaten the health of the population, the health of the person, the sanitary-epidemiological state, namely Art.344 of the Contravention Code [10], the subject of which are contraventions in the field of market surveillance, metrology, standardization and consumer protection, manifested in violation of the requirements established in the normative acts on the production, storage, making available on the market and marketing of products, on the provision of services and violation of consumer protection rules.

Thus, ANRCETI regulates an essential area for public safety and consumer protection, focusing on the responsibility of producers, distributors and service providers, in case of violations related to product safety requirements, service provision and consumer protection, and through the sanctions provided, the law guarantees that the products and services put on the market meet the legal requirements and do not endanger the health or rights of consumers. The rules on transparency, fairness of information provided to consumers about the products and services they purchase and the resolution of complaints, also reflect a commitment by the authorities to ensure a safer and fairer consumer environment.

ANRCETI examines the contraventions stipulated in Chapter XV, contraventions affecting the entrepreneurial activity, taxation, customs activity and securities, namely: Art.273 para. (1), (4), (6), (10), (11), Art.278 para. (l), (2), (4), (5), Art.279-281, Art.283 para.(1) of the Contravention Code [10], the subject matter of which concerns the regulation and sanctioning of various violations in the field of trade (e.g. lack of signs of Mats, unjustified refusal to provide a service, etc.), consumer protection (e.g. violation by the seller, provider of the term established by the legislation for the free remidiation of deficiencies arising from the product or service, etc.), and compliance with the quality regulations of

products and services (e.g. falsification of products, storage, placing on the market and/or marketing of products, provision of services without certificates of conformity, etc.).

Conclusions. We would like to underline that the legislation in force gives ANRCETI a wide range of prerogatives and competences, which allow the realization of policies and goals essential for the proper functioning of the telecommunications market in the Republic of Moldova, as well as the detection, prevention, combating and sanctioning of contraventions in the field of electronic communications.

ANRCETI by monitoring and controlling the activities of telecom operators, ensures compliance with regulations and quality standards, protecting the rights of end users as well as of telecom operators.

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LEGAL REGIME OF INTERCOMMUNITY DEVELOPMENT ASSOCIATIONS

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Summary

The article examines the legal regime of intercommunity development associations (IDA) in a comparative perspective between Romania and the Republic of Moldova, highlighting the legal foundations, the organizational and functional structure, as well as the institutional implications of these entities in the process of administrative decentralization and territorial cooperation. In Romania, IDAs benefit from a complex regulatory framework, strengthened by the administrative experience gained and the extensive use of European funds, being regulated by the Administrative Code and the special legislation on public services. In the Republic of Moldova, the Law no. 17/2023 provides a recent and promising legislative basis, but the practical implementation of the IDAs is still at an early stage. The study highlights the convergences and differences between the two systems, highlighting the importance of a coherent institutional framework, effective local autonomy and strengthening administrative capacity for effective intercommunity cooperation. The conclusions underline the need to harmonize national legislation with European best practices and to develop functional support mechanisms for IDAs in order to achieve objectives of local and regional public interest.

Keywords: intercommunity development associations, intercommunal cooperation, comparative legal regime, local autonomy, administrative decentralization, Romania, Republic of Moldova

Introduction. The process of administrative decentralization, as an expression of the modernization of public governance and the consolidation of local autonomy, has led to the emergence of new institutional forms of cooperation between administrative territorial units (ATU), of which the intercommunity development associations (IDA) are noted. These entities have acquired an increasingly important role in the architecture of local public administration, especially in the context of the need to coordinate and streamline public services, to attract external funds and to promote sustainable regional development.

In Romania, IDAs have evolved into a complex legal framework, being regulated by a combination of rules from public and private law, in a system that reflects the adaptation of the local administration to the requirements of European integration and of the financing from non-reimbursable funds. The Administrative Code (EGO no. 57/2019), the Law no. 51/2006 on community services for public utilities and other relevant normative acts constitute the legal support of these structures, whose activity has experienced an

accelerated development over the last two decades.

In the Republic of Moldova, the IDA phenomenon is relatively recent, but it has acquired a specific regulation by Law no. 17/2023 on intercommunity development associations, reflecting the authorities' efforts to strengthen administrative capacity and promote interinstitutional cooperation at local and regional level. This law provides a unitary and coherent framework for the establishment, organization and operation of IDAs, placing them in a predominantly public legal regime, in accordance with the principles of local autonomy, transparency and public accountability.

Discussions and results obtained. This article aims at a comparative analysis of the legal regime applicable to intercommunity development associations in Romania and the Republic of Moldova, with emphasis on the normative foundations, organizational structure, competences and operating mechanisms of these entities. This approach aims to highlight the convergences and divergences between the two systems, as well as to identify best practices that can help strengthen inter-community cooperation and improve administrative capacity at local level.

The study has a special theoretical and practical importance, as it contributes to clarifying the legal status of IDAs and to understanding their role in the architecture of modern public administration. At the same time, the research aims at the legal foundations of their functioning, highlighting the impact of administrative reforms and European regulations on the process of organizing and conducting inter-municipal cooperation. Finally, the article provides recommendations for harmonizing and streamlining the regulatory and institutional framework, in order to fully capitalize on the potential that these structures have in the context of sustainable development and European integration.

The "Legal regime of the IDA" defines their position in the public law system, delimiting:

– who can set them up,
– what are their duties and limits,
– how does it work,
– what is their status to the state, ATU and citizens.

This regulation allows IDAs to be effective instruments for governance, with a key role in administrative decentralization and territorial development.

In Romania, the legal regime of intercommunity development associations (IDA) is the result of a legislative evolution that accompanied the process of decentralization and administrative regionalization started after 2000. These entities have emerged in response to the need for cooperation between administrative territorial units (ATU) for the provision of more efficient public services, the development of infrastructure and the attraction of European funds.

Legal regime of intercommunity development associations in Romania is regulated by:

• **The Administrative Code** - EGO no. 57/2019, in Title V, Art. 89–92[11]. This regulatory framework provides for the establishment of ADIs by two or more ATUs for the purpose of jointly exercising or providing public services [11].

• **Law no. 51/2006 on community services for public utilities** is another fundamental normative act, which allows the delegation of powers to the IDA, especially in the field of water, sewerage and sanitation services [6].

• **Governmental Ordinance no. 26/2000** on associations and foundations – insofar as they apply subsidiarity, they regulate the aspects of internal organization, management

and patrimony [10];

• **Law no. 273/2006** on local public finances – provides for the possibility of allocating funds to the IDA, including transfers from local [8] budgets.

According to the Art.91 of the Administrative Code, ATUs may associate with each other voluntarily, based on partnership and local autonomy. IDAs are considered public law legal entities, although they can sometimes acquire organizational forms inspired by private law.

At the same time, the legal regime of the IDA is strongly influenced by the European rules on inter-municipal cooperation and public-public partnership. Recommendation CM/Rec(2007)4 of the Committee of Ministers of the Council of Europe on inter-municipal cooperation is often invoked in specialist doctrine[12].

In the Republic of Moldova, the regulation of intercommunity development associations is relatively recent. The fundamental law in the matter is **Law no. 17/2023 on intercommunity development associations**, which comes to systematize and clarify the status of these entities[7].

Article 2 of the Law defines IDAs as[7] "legal entities under public law, created by administrative territorial units for the purpose of jointly carrying out projects or activities of public interest". This law:

– establishes a unified procedure for establishment (by association agreement approved by local councils);

– establishes the regime of patrimony, budget and responsibility;

– enshrines the subordination of these entities to the principles of local autonomy, transparency and public accountability.

Law no. 436/2006 on local public administration [9] states in Art.8 about the possibility of inter-municipal cooperation, but without detailed regulation, leaving this area in the care of the special law.

Also, the **Law no. 181/2014 on local public finances** [5] allows the allocation of funds to support IDAs, especially in the context of regional development programs or cross-border cooperation.

In addition, Moldova has developed strategic policies that include the promotion **of IDAs, such as the National Strategy for Regional Development** [1] and **the Public Administration Reform Strategy for 2023–2030** [2], which identifies IDAs as a pillar of the modernization of public services at local level.

Romanian legislation provides a more mature and detailed legal framework, underpinned by a solidified administrative practice over time and the support of European funds. Instead, Moldova is in a process of institutional consolidation, the new Law no. 17/2023 is an important step towards alignment with European standards.

Both systems recognize IDAs as autonomous entities, but deeply anchored in the public administration system. The main differences relate to the applicable legal regime (public-predominant in Moldova, mixed in Romania), the institutional support framework and the way they are treated in relations with central authorities.

Intercommunity development associations (IDA) are one of the modern and flexible forms of collaboration between administrative territorial units (ATU), arising in the context of the processes of decentralization, regionalization and reform of public administration. The general characteristics of these entities, both in Romania and in the Republic of Moldova, reflect a synthesis between the need for administrative efficiency and the

imperative of institutional cooperation.

One of the defining features of IDAs is the fact that exclusively administrative territorial units can establish them: communes, cities, municipalities and county councils in Romania [11]; territorial administrative units of any level in the Republic of Moldova [7]. In neither of the two countries is the participation of private legal entities or citizens as founding or associate members of the IDA allowed.

In Romania, Art.89 of the Administrative Code clearly states that "two or more administrative territorial units may be associated in order to jointly carry out works and services of local or county public interest". This wording can also be found in the special legislation (Law no. 51/2006) [6], which reiterates the public character of the Association.

In the Republic of Moldova, the Art.2 of Law no. 17/2023 stipulates that "the members of an intercommunity development association can only be administrative territorial units of any level". Therefore, the establishment regime is exclusively public, reflecting a more rigid but also clearer legal approach.

IDAs are non-profit entities. Unlike commercial companies or other contractual forms, they do not seek to generate profit for their members. The exclusive purpose is to provide public services or carry out projects in the interest of the local communities involved.

The public services managed by the IDA vary according to the delegated powers, but often include water supply and sewerage, waste management, public transport, public lighting, public domain management or local economic development. For example, many IDAs in Romania are created to implement projects with European funding in the field of urban infrastructure (e.g. IDA Apă-Canal, IDA Eco-Deșeuri etc.).

In the Republic of Moldova, according to Art.2 of Law no. 17/2023 [7], associations may operate in areas of competence of public administration and ATU, in order to achieve their tasks in the social, economic, cultural and environmental sphere, in order to ensure sustainable development and increase the quality of life in administrative-territorial units such as: local economic development, modernization of infrastructure, social development, environmental protection, tourism or education. Although IDAs may generate revenue from the provision of services, such revenue must be reinvested for statutory purposes.

Another essential element of the functioning of the IDAs is the voluntary but formalized transfer of competences and resources from members. This requires:

- delegation of tasks of local or regional interest to the association;
- allocation of funds from local budgets;
- transfer of public or private goods (land, buildings, equipment).

In Romania, the Administrative Code explicitly allows the delegation of powers through administrative acts adopted by local or county councils, and the Community Services Law establishes the possibility of concession of services to the IDA, which thus become regional operators.

In the Republic of Moldova, the Law no. 17/2023 regulates the transfer of powers, stipulating that it is done by the association agreement and by decisions of the local councils. The IDA is also entitled to manage its own assets and to contract loans, in compliance with public finance regulations.

IDAs are characterized by a management structure specific to autonomous public entities:

• The general assembly of members (consisting of representatives of the associated ATUs);

• Board of Directors or Management Board;

• Chairman/Chief Executive Officer (who performs the current management duties).

Decisions are taken by vote of the members, depending on the statutory provisions – as a rule, in proportion to the share of participation or according to the principle of "one member, one vote".

This internal organization is more strictly regulated in the Romanian legislation, being inspired by the structure of public institutions, but adapted to an associative form. In the Republic of Moldova, the Law no. 17/2023 provides greater freedom of internal regulation by articles of association, but imposes rules of transparency, audit and reporting.

Anyways, the fundamental characteristic that unifies the legal regime of IDAs is subordination to the principle of local autonomy. These entities are not subordinate to the central authorities, but act by the common will of the member local authorities.

In Romania, Art.3 of the Administrative Code emphasizes local autonomy as a constitutional principle, and IDAs are a concrete expression of it. In Moldova, local autonomy is guaranteed by the Constitution (Art.109) and regulated by the Law no. 436/2006, which expressly allows forms of intercommunal cooperation [9].

Intercommunity development associations (IDA) rely on an institutional cooperation mechanism that involves the voluntary engagement of several administrative territorial units (ATU) in order to achieve common interests. The cooperation structure constitutes the organizational and functional foundation of the IDAs, providing the legal framework for the coordination of collective actions, the management of common resources and the exercise of delegated duties.

The starting point of any inter-municipal cooperation is **the association agreement**, an essential legal act, which expresses the common will of the participating ATUs. It must be approved by decisions of local (or county, in Romania) councils, and subsequently transposed into the IDA articles of association.

The Agreement establishes:

– the purpose of cooperation (public services, regional development, infrastructure, environmental protection, etc.);

– the financial and material contributions of the members;

– partnership duration;

– the rights and obligations of each Party;

– the procedures for admission, withdrawal and exclusion of members;

– dispute resolution mechanisms.

In Romania, the model of agreement is usually standardized and adapted to the requirements of some funding programs, especially from European funds. In the Republic of Moldova, the Law no. 17/2023 enshrines a clear structure of the agreement, but leaves more freedom in formulations, to allow adaptation to local needs.

The cooperation structure implies the existence **of management and decision-making bodies**, which ensure the functioning of the association and the implementation of the policies established by the founding members. In both states, the main organs are [4]:

• **The general assembly of the members**: supreme decision-making body, consisting of the legal representatives of the member ATUs (mayors, presidents of county/district councils). It approves the budget, the development strategy, the investment plans

and exercises control over the executive management.

• **Board of Directors/Management Board**: executive body, appointed by the general assembly, which coordinates the implementation of decisions, supervises the activity of the executive director and adopts current decisions on the activity of the association.

• **Executive Director/IDA President**: the operational manager of the entity, employed under an individual employment contract or appointed from among the founding members. He/she is responsible for the daily management of the activity, representation in relation to third parties, commitment of expenses and implementation of projects.

In Romania, the composition and duties of these bodies are regulated in detail in the Administrative Code and in Law no. 51/2006. In the Republic of Moldova, the Law no. 17/2023 enshrines a similar pattern, but offers greater scope for customization through the articles of association of each IDA.

The cooperation structure also includes the regulation **of the financing mechanisms**, which are absolutely necessary for the efficient functioning of the IDAs. Sources of funding include:

– members' contributions (allocated through local budgets);
– grants or subsidies from the state (especially for regional development);
– external funds (especially in Romania – EU funds);
– own income (from the provision of services or the lease of property).

In Romania, IDAs are frequently used as beneficiaries of European funds, especially in the field of public utility services (Environment SOP, LIOP, NRRP). Many of them have operated as contracting authorities in projects over 10 million euros.

In the Republic of Moldova, this practice is being formed at the moment, but Law no. 17/2023 explicitly provides that the IDA may access external funds, individually or in partnership with public authorities or the private sector.

IDAs operate as autonomous entities, but interdependent from the founding members. They are not subordinate to the central authorities, but are subject to financial and administrative control by the Court of Accounts, Public Finance Agencies, as well as other competent institutions.

In addition, in Romania, IDAs can conclude partnerships with ministries, government agencies or regional operators for the realization of joint projects. In Moldova, such partnerships are encouraged through regional cooperation strategies, but the practical framework requires further development.

Both Romania and the Republic of Moldova have promoted the establishment of IDAs in the context of cross-border cooperation. The cooperation programs Romania-Moldova-Ukraine, financed by the European Union, encouraged the ATUs of the two states to set up IDAs in order to implement joint projects.

In this respect, the IDAs can be an instrument of local diplomacy and institutional rapprochement between the communities on the two banks of the Prut River.

Intercommunity development associations (IDA) are, by their legal and functional nature, associative entities, established by the collective will of several local public administration authorities. They reflect the application of an established principle of decentralization – that of cooperation between administrative territorial units – in an institutionalized form and regulated by legal norms. From this perspective, the analysis of the associative structure of the IDAs reveals multiple specific aspects both in the organizational plan, as well as in the legal and functional plan.

The essence of any associative structure is the freely expressed consent of its founding members. In the case of IDAs, this consent is expressed by decisions adopted by local/county councils (in Romania) or by local/district councils (in the Republic of Moldova), in order to establish a joint entity. The Association Agreement and the Articles of Association constitute the basic documents governing the organization, operation and objectives of the Association.

This collective will has a public character and materializes in administrative acts. In Romania, Art.89 of the Administrative Code expressly provides that "two or more administrative territorial units may be associated with each other in order to jointly carry out works and services of local public interest". In the Republic of Moldova, the Art.3 of the Law no. 17/2023 similarly stipulates that "intercommunity development associations are established by the freely expressed agreement of the founding ATUs, in order to jointly carry out tasks of local or regional interest".

The organizational structure of the IDAs reflects the classical principles of an association:

– **equality of members** (all associated ATUs have equal rights, to the extent provided by the Articles of Association);

– **autonomy of will** (each ATU decides whether to join, stay or withdraw);

– democratic management (decisions are adopted in the general assembly of members);

– **institutional solidarity** (legally adopted decisions commit the entire association).

In both countries, this associative structure is complemented by the executive bodies and internal regulations that ensure the operational autonomy of the IDA, in compliance with the will of the founding members.

Unlike the associations established under GO no. 26/2000 (Romania) or the general legislation on associations (in Moldova), the IDAs are composed exclusively of public entities – local government authorities. This particularity gives a **hybrid dimension** to these entities: they are associative structures from an organizational point of view, but they have features of public authority by the nature of their members and objectives.

This has important implications:

– the budget of the association consists of public funds (contributions from local budgets);

– its acts must comply with the principles of legality, transparency and good governance;

– the activity is subject to the control of the Court of Accounts and, in the case of Romania, also of the County Courts of Accounts;

– in some cases, the IDA may be considered as contracting authorities within the meaning of public procurement legislation.

The associative structure of the IDA is accompanied by a special legal regulation that places them in an intermediate area between public law and private law legal entities. In Romania, this duality is more pronounced, as GO no. 26/2000 can be applied subsidiarily, while in Moldova, the Law no. 17/2023 establishes a preponderant regime of public law.

This legal ambivalence causes:

– difficulties in delimiting the legal liability regime;

– uncertainties regarding the application of labor law (contractual vs. bureaucratic regime);

– differences in interpretation regarding the application of tax or accounting rules.

However, in both states, IDAs are recognized as autonomous entities, distinct from their founding members, with their own legal personality, patrimony and capacity to act in court.

Another essential element of the associative structure is the need to take decisions by consensus or by majority mechanisms established by the Articles of Association. As a rule, in the general assembly of members, the votes are cast:

– either equal (one member – one vote);

– or proportional to the contribution to the association's budget;

– or combined (e.g. 50% equal, 50% proportional).

This formula ensures a balance between the common interests and the specifics of each member community. In practice, the proportional voting system is common in IDAs in Romania that manage regional networks (e.g. water-sewerage or sanitation), where counties or municipalities contribute higher amounts.

To conclude:

Intercommunity development associations (IDA) are an institutional expression of cooperation between administrative territorial units, designed to meet the requirements of a modern public administration, oriented towards efficiency, subsidiarity and sustainable development. The comparative analysis of the legal framework in Romania and the Republic of Moldova highlights both a number of common elements and significant differences reflecting the level of institutional maturity, the normative context and the distinct European influences in each system.

In Romania, the legal regime of IDAs is shaped by a solid administrative practice, supported by a complex regulatory framework and the experience gained in the management of European funds. The relationship between the Administrative Code, Law no. 51/2006 and other normative acts ensure a legal coherence that allows the efficient operation of these entities. The dual character – between public and private law – gives flexibility, but also complexity in applying the rules on governance, financial responsibility and employment relationships.

Instead, the Republic of Moldova is at an early stage of developing this inter-municipal cooperation instrument. Law no. 17/2023 represents a major progress in the systematization of the legal regime of IDAs, providing a clear, coherent structure and in accordance with the principles of local autonomy and good governance. However, the challenges relate to the effective application of the law, the creation of an institutional support framework and the adaptation of administrative capacity to the new requirements.

The following key findings emerge from the analysis:

1. **The exclusively public character** of the founding members is a common feature of both systems, strengthening the public utility function of the IDAs.

2. **The non-patrimonial purpose** of these entities remains a defining element, with emphasis on the provision of public services and the implementation of joint projects.

3. **The internal organizational structure** is relatively similar in the two countries, but in Romania, there is a higher degree of standardization and professionalization of the executive management.

4. **The Romanian legal regime** more efficiently integrates the IDAs in the mechanisms for absorbing European funds, while the Republic of Moldova must develop its technical-administrative capacity in this regard.

5. **Public control, transparency and accountability** remain imperative for both states, and national laws gradually reflect this orientation.

In conclusion, IDAs constitute a functional and adaptable solution for the promotion of local public interest, in a context marked by increased demands on public service quality, resource efficiency and cross-border cooperation. Capitalizing on their potential depends on the quality of regulation, the administrative capacity of the member ATUs and the political and institutional support provided by the state.

From a comparative perspective, Romania can provide a model of good legislative and administrative practices in the field of intercommunity development, while the Republic of Moldova can strengthen its reform efforts by adjusting the regulatory framework and by effectively supporting local authorities in the association processes.

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ANALYSIS OF INTERNATIONAL GOOD PRACTICES FOR PREVENTING FRAUD AND CORRUPTION IN PUBLIC PROCUREMENT CONTRACTS

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Summary

This paper aims to analyze international good practices in preventing fraud and corruption in public procurement contracts, through the lens of the regulatory framework, control mechanisms and technological solutions implemented globally, emphasizing their relevance for strengthening transparency, efficiency and accountability in the management of public funds. Public procurement remains one of the most vulnerable sectors to integrity risks, especially in emerging economies and administrative systems undergoing reform.

The main objective of this study is to identify and formulate practical and adaptable recommendations to the legal and institutional context of the Republic of Moldova. Only on the basis of a comparative analysis can some strategic directions be outlined for the development of sustainable public policies that comply with international standards on integrity in the public sector. Consolidation of the national procurement framework cannot be achieved only through legislative changes, but involves the implementation of verified, transparent and resilient administrative practices, because it is not enough to talk about transparency only in theory, practical applicability remains the real test of administrative integrity.

The prevention of corruption must become a continuous process, not a temporary reaction to external pressures. Integrity in public procurement is not only a condition for economic efficiency, but also a cornerstone of functional democracy. The results of this study highlight the importance of digitalization of processes, decision-making transparency and the involvement of civil society in public procurement contracts monitoring.

Keywords: public procurement, anti-corruption, integrity, public funds, corruption, fraud, principles, transparency, competition.

Introduction. Preventing fraud and corruption in public procurement contracts is a major priority at the international level, having a direct impact on the transparency and efficiency of the use of public funds. In the context of globalization and economic integration, states are exposed to increased risks of fraud and corruption, and as a consequence, the implementation of international best practices becomes essential.

It is not surprisingly that the Advisory Committee on Business and Industry to the OECD has noted that: "Public procurement is one of the most important public governance issues. Measures are needed to ensure integrity by reducing bribery and corruption." [1] (the translation belongs to us).

The objective of this study is to analyze and identify the most effective international

practices for preventing fraud and corruption in the field of public procurement, with the aim of formulating recommendations applicable in the national context.

The Republic of Moldova moved towards transposing the European Union Directives in the field of public procurement in 2015, by adopting the law on public procurement, currently in force [2] and the laws on procurement carried out by entities operating within certain branches (for example: water, energy, transport and postal services, etc.). However, the laws have been amended several times since then, and legal instability is one of the weaknesses of the public procurement system.

Methods and materials applied. To carry out this study, a mixed methodological approach was used, which combines qualitative methods with elements of comparative analysis, relevant case studies and specialized literature, focusing on identifying internal control tools and mechanisms adopted at international level. The chosen methodology aims to identify, compare and evaluate international good practices in preventing fraud and corruption in the field of public procurement. Thus, the research method of documentary analysis included the examination of relevant international legislation (UNCAC, EU Directive 2014/24/EU, ISO 37001), of best practice guides and reports from international organizations (OCDE, UN, etc.). The research method - the case study - was applied to examine in depth the Canadian model of fraud prevention in public procurement. The case study was selected based on its relevance and high degree of institutional integration and procedural innovation. The comparative analysis method was used to highlight the differences and similarities between the policies and mechanisms applied in different countries, such as Canada, France and Norway. The comparison took into account factors such as transparency, the efficiency of internal control mechanisms, civil society participation and the use of digital tools. The method of triangulation of sources was applied to ensure the validity and reliability of the results, by corroborating data from different sources (official documents, academic publications, reports from international organizations and government information).

This methodology allowed the identification of a coherent set of fraud prevention measures and tools that can be adapted in different national contexts, with the aim of integrity strengthening in public procurement contracts.

Discussions and results obtained. Public procurement is substantially regulated to ensure value for money, fair competition and transparency. However, the field is also exposed to corruption risks due to the large sums of money spent, the technical and legal complexity and the degree of discretion/freedom available to contracting authorities to determine the details of public expenditure.[3]

In order to have a clear understanding of the phenomenon of corruption and fraud in public procurement, it is essential to define these concepts and analyze the international legal framework. Fraud refers to intentional acts of deception to obtain financial or other advantage, while corruption involves the abuse of power for personal gain. At the international level, various bodies such as the UN, OECD and the World Bank have developed Directives and standards aimed at preventing and combating fraud and corruption, including within the public procurement process. Among these, the following are noticed:

– The United Nations Convention against Corruption (UNCAC) [4] is the only universal anti-corruption instrument with legally binding force. It provides a global framework for corruption preventing and combating, promoting proper management of public affairs and measures such as transparency in procurement processes and protection of whistleblowers, while encouraging international cooperation and technical assistance.

– In order to establish a unified legal framework, which guarantees free and competitive access between companies in the European Union, EU legislation provides for minimum harmonized rules on public procurement. These rules are mainly enshrined in the EU Directive 2014/24/EU on public procurement [5]. Established to ensure a competitive and transparent framework in public procurement procedures, it includes measures to prevent conflicts of interest and fraud. Contracts related to water, energy, transport and postal services are excluded from the Directive. These are instead regulated by Directive 2014/25/EU [6].

The respective regulations are transposed into the national legislation of the Member States and are mandatorily applied to procedures with values exceeding certain amounts. In the case of contracts with values below these thresholds, internal rules apply, of course provided that the general principles of EU law, such as transparency, equal treatment, non-discrimination and proportionality, are respected (see Case C-324/98 Telaustria Verlags GmbH and Telefonadress GmbH v. Republic of Austria [7]). In its consistent case law, the Court of Justice of the European Union has ruled that these principles also apply to contracts below these thresholds.

– A special place also belongs to the Organization for Economic Co-operation and Development (OECD) Guidelines on principles for integrity in public procurement.[8] This guide provides a comprehensive framework for integrity promoting throughout the entire procurement cycle, from needs assessment to the management and execution of public procurement contracts, etc.

– Also, a significant role in integrity strengthening in the public procurement process is played by the legal framework created at the Council of Europe level, in particular through the Criminal Law Convention on Corruption, adopted in Strasbourg in 1999 [9]. This Convention establishes concrete obligations for States Parties to criminalize acts of corruption, both in the public and private sectors, including in relation to public procurement. The mechanism for monitoring the implementation of the Convention is provided by the Group of States against Corruption (GRECO) [10], which provides periodic assessments, including of the Republic of Moldova, on the efficiency and compliance of the legislative and institutional measures adopted by the member states. GRECO promotes high standards of integrity in public administration, emphasizing transparency, preventing conflicts of interest and holding contracting authorities accountable. In the context of public procurement, GRECO recommendations are aimed at strengthening anti-corruption measures and ethical standards in the public sector and often aim at the adoption of rigorous prevention mechanisms, such as codes of conduct, declarations of assets and interests, professional training of employees and effective mechanisms for sanctioning acts of corruption.

The Republic of Moldova is a party to the GRECO monitoring mechanism within the Council of Europe since July 1, 2001. In this capacity, the state is subject to periodic multilateral evaluations regarding the measures adopted to prevent and combat corruption, both in the public and private sectors. Following the accession of the Republic of Moldova to the relevant legal instruments, in particular the Criminal Law Convention on Corruption and the Civil Law Convention on Corruption [11], a series of reforms aimed at aligning the national framework with international integrity standards followed.

In the specific context of public procurement, GRECO has repeatedly highlighted certain persistent risks regarding illegitimate political influences on the decision-making process, the lack of effective mechanisms to prevent conflicts of interest and certain de-

ficiencies in the transparency and control of the award of public procurement contracts.

So far, the Republic of Moldova has been subject to several GRECO evaluation rounds, and its reports are public: Round 4 (2014): It aimed to prevent corruption among deputies, judges and prosecutors.[12] Round 5 (2023) evaluates measures to prevent corruption and promote integrity in the central public administration (executive leadership positions) and at the level of law enforcement institutions [13]. The latter identifies a number of areas where improvements are needed, including in the field of public procurement. At the same time, the authorities of the Republic of Moldova are expected to submit a report to GRECO on the implementation of its 25 recommendations by 30 June 2025, so that it can assess the country's level of compliance.

We note that in its reports GRECO has emphasized the need to improve the transparency of the decision-making process, the conflict-of-interest regime and the efficiency of disciplinary mechanisms, aspects that are also essential for public procurement. At the same time, although GRECO is not a mechanism specialized exclusively on public procurement, it nevertheless constantly addresses corruption risks in this area within its assessments.

As regards the Republic of Moldova, successive GRECO reports have highlighted some systemic integrity risks in the public procurement process. The recommendations made aim to establish clear standards of conduct, continuous training of personnel involved in procurement procedures and strengthening the independent monitoring and audit framework. For example, in the Fifth Round Evaluation Report (2023), GRECO highlighted that significant vulnerabilities persist in the public procurement process in the Republic of Moldova in the context of budget execution and political influence, calling for the strengthening of control over the award of contracts. These findings are of particular relevance in the process of modernizing and Europeanizing the national public procurement system.

The last but not the least, the ISO 37001 Anti-Bribery Management System is also important. This international standard provides guidance for implementing anti-corruption measures and monitoring their effectiveness. In the context of the Republic of Moldova, ISO 37001 is gaining increasing relevance, especially in the field of public procurement. Its implementation by contracting authorities could significantly contribute to strengthening internal control systems and preventing bribery risks. The standard can also be used as a reference in the development of internal procedures or even as a requirement for economic operators participating in tenders, thus increasing the level of integrity in the relationship between the state and suppliers. ISO 37001 can operate complementary to the Integrity Law No. 82/2017 and the Public Procurement Law No. 131/2015, providing an internationally recognized methodological basis for assessing and managing corruption risks.

Business integrity is an essential component of corporate sustainability, including in the field of public procurement. The negative impacts of economic activities along supply chains are often facilitated by corruption phenomena. Such impacts may include violations of environmental law or abuses of human and labor rights. In other words, corruption is one of the fundamental causes of negative consequences on sustainability and durability. At the same time, corruption, by itself, represents a harm that companies have a duty to avoid as part of responsible business conduct (RBC – Responsible Business Conduct) [14].

On the contrary, the implementation of effective measures to prevent corruption contributes to avoiding other negative effects, and strengthening the integrity of public procurement can support their sustainability at the global level. Public procurement,

at the crossroads between the public and private sectors, is particularly vulnerable to corrupt practices. The financial volume involved in public procurement accentuates the relevance of this vulnerability: for example, in OECD member countries, government procurement represents an average of 13% of annual GDP [15].

The exact estimation of the size of corruption in public procurement is however very difficult. Nevertheless, recent research indicates that the value of bribes could range between 8% and 25% of the total value of goods, services or works purchased by governments [16].

Good practices for preventing fraud and corruption in public procurement. Fraud and corruption prevention practices in several countries were analyzed, among which France stands out for its extensive digitalization of public procurement processes, as a means of preventing corruption and increasing transparency. The national system "PLACE" (Plateforme des Achats de l'État) allows the full management of online procedures, from the publication of notices to the signing of public procurement contracts. Simultaneously, France introduced the obligation to publish essential data of public procurement contracts in an open format, which allows for more rigorous oversight by civil society and the media. The Court of Accounts and the National Financial Prosecutor's Office (PNF) actively collaborate in investigating irregularities in procurement, complemented by a consolidated legislative framework against conflicts of interest. These combined measures contribute to creating a predictable, digitalized and transparent environment, which reduces fraud risks and increases trust in public administration.

Norway also stands out for its strong institutional culture of transparency and the active involvement of civil society in public procurement monitoring. The procurement system is regulated by the Law on Public Procurement, complemented by strict rules on conflict of interest, decision-making transparency and reporting of irregularities. A distinctive element is the use of the Doffin Portal (Database for public procurement), which provides public access to all procurement notices. In addition, NGOs and the press have wide access to documents, which encourages independent reporting and investigations. Norwegian institutions also use regular external and internal audits, with a focus on systemic risks preventing, not just on post-factum detection of irregularities. These tools ensure a high level of integrity and efficiency in the management of public funds. At the same time, Norway has already demonstrated a historic change with a 30% share of climate and environmental considerations in public procurement.

Of course, if we were to analyze, then from each EU member state we could take over certain good practices that could be adapted in the Republic of Moldova, but in the future, we will refer to a case study, namely the Canadian model. An example of good practice at the international level is provided by Canada, which has developed a complex system for integrity protecting in the public procurement process. Through the Central Agency "Public Services and Procurement Canada", the Government of Canada has implemented policies and tools aimed at reducing the risks of fraud, corruption and exploitation through forced labor in public procurement. Key practices include:

- The Office of Supplier Integrity and Compliance, which manages the program to suspend and debar unethical and non-compliant suppliers (OSIC);
- Fairness Monitoring Program, through which independent observers assess the impartiality and transparency of procurement processes;
- Biannual fraud awareness campaigns aimed at employees, suppliers and the public;
- Hotline for fraud reporting in public contracts, in partnership with law enforcement authorities;

• Internal investigations, data analysis and forensic accounting expertise to detect unethical practices;

• Policies against forced labor, including contractual clauses and ethical sourcing policies in the textile industry;

• Updated Code of Conduct, setting clear standards on human rights and labor;

• Contract Security Program, which imposes strict supplier vetting requirements.[17]

Functional integration between different government structures allowed for a holistic approach to corruption risks in the public procurement process. In addition, contracting authorities have cooperated in joint initiatives. A well-known example is cooperation between similar agencies to share responsibility for risk assessments of human rights violations in supply chains for common procurement categories [18].

This model emphasizes the importance of inter-institutional collaboration, transparency and a proactive approach in fraud combating, serving as a benchmark for other states interested in reforming of the public procurement system.

But how applicable is the Canadian model in the Republic of Moldova? The Canadian model is distinguished by the use of modern governance tools in the field of public procurement. By comparison, the Republic of Moldova is in a process of gradual alignment with international standards in terms of integrity, transparency and corruption prevention. Although significant progress has been made, including through the reform of the National Agency for the Resolution of Complaints and the strengthening of the competences of the National Integrity Agency, systemic vulnerabilities related to political influence, the lack of interoperability of databases and the uneven application of integrity rules in procurement practice still persist.

Adapting the Canadian model to the context of the Republic of Moldova would require:

– Creation of specialized structures for monitoring the integrity of suppliers and the imposition of strict eligibility criteria;

– Establishment of a mechanism for independent monitoring of the correctness of procurement procedures;

– Implementation of public awareness campaigns regarding the risks of fraud and corruption;

– Introduction of contractual clauses that condition the participation in procedures on the respect of human rights and labor standards;

– Investments in digitalization and risk analysis technologies to prevent favoritism or manipulation of procurement processes.

– Introduction of anti-forced labor clauses in contracts, allowing termination in cases where the use of forced labor in the production of the delivered goods is discovered.

– Implementation of a contract security program that would require mandatory security screening of private organizations and personnel with access to classified information or critical infrastructure.

– Staff rotation or redistribution can also contribute to a more coherent response: civil servants specialized in one field (integrity, supply chains, business or sustainability in public procurement) can be assigned to work in public institutions that have another field as their main activity. [17]

In conclusion, we can say that the Canadian model offers a partially applicable framework for reforming the Moldovan public procurement system, especially from the perspective of integrity, transparency and sustainability. The adaptation of these best practices could strengthen public confidence in the procurement process and contrib-

ute to aligning the Republic of Moldova with European and international standards. This approach could be used as a model for states that wish to align their public procurement policies with those regarding combating corruption, respecting human rights and promoting sustainability and durability.

At the same time, the Republic of Moldova represents a notable example of adaptation to international good practices in the field of corruption prevention in the field of public procurement, actively adopting the international standard Anti-Bribery Management System. Starting with 2021, several public institutions in the Republic of Moldova have obtained ISO 37001 certification. Among these, the National Anticorruption Center, the Competition Council, the National Road Transport Agency, as well as some local public authorities such as the Mayoralties of Cahul and Ungheni municipalities stand out. These certifications are not just symbolic, but reflect the implementation of an effective bribery prevention system, with direct applicability in public procurement procedures. Supported by initiatives from the European Union and UNDP, the certification process was integrated into the broader framework of the National Integrity and Anti-Corruption Program 2024–2028 [19], which explicitly promotes the use of international standards as a tool for good governance strengthening. This approach demonstrates once again that ISO 37001 can be not only an international benchmark, but also a national reference standard, concretely applicable in the public procurement process.

When developing the National Integrity and Anti-corruption Program 2024–2028, the best practices in the field of anti-corruption policies were taken into account, and several examples of such practices of the states of Bulgaria, Croatia, Estonia, Lithuania and Romania were identified. All of these countries have developed strategies or action plans to guide their efforts in the fight against corruption. These documents provide a clear framework and specific directions for strengthening integrity, increasing transparency and combating corruption on various dimensions. Thus, an obvious trend in all the countries analyzed is the consolidation of the institutional and regulatory framework necessary for corruption preventing and combating. Another trend is highlighted in the importance of increasing transparency and openness in the work of public authorities. This involves ensuring access to information, publishing relevant data and promoting a culture of transparency in public institutions and in the public procurement process. [20]

Conclusions and recommendations. In most public policies analyzed at international and regional levels, there is a strong tendency to consolidate the culture of integrity through awareness-raising tools and active involvement of civil society. Anti-corruption strategies are no longer limited to punitive measures, but include essential components such as civic education, public information campaigns and participatory mechanisms for monitoring administrative processes, including in the field of public procurement. The role of NGOs and citizens in corruption identifying and reporting thus becomes a pillar of modern prevention policies.

At the same time, the recent practice of Eastern European states highlights the importance of strategic alignment with the recommendations of specialized international bodies, such as the ACN/OECD (Anti-Corruption Network for Eastern Europe and Central Asia of the Organization for Economic Cooperation and Development). Accepting these assessments and transposing the recommendations into national public policy documents reflects a real openness towards the same goal as international standards on integrity, transparency and accountability in the public sector.

Combating fraud and corruption in public procurement is one of the most pressing

challenges. The comparative analysis of international good practices reveals that success in this area depends not only on political will and the regulatory framework, but also on the adoption of standardized, efficient instruments capable of preventing systemic risks.

Within this context, we make the following recommendations:

– Adoption and expansion of the implementation of the ISO 37001 standard in the public and private sector, especially within contracting authorities managing infrastructure projects or external funds. The standard provides a formal framework for identifying, preventing and sanctioning bribery at all stages of the procurement process.

– Inclusion of integrity mechanisms as part of the evaluation criteria in public procurement, including through the introduction of contractual anti-corruption clauses, compliance obligations.

– Creation and operationalization of platforms for participatory monitoring of public procurement, involving NGOs, mass media and citizens in evaluating the transparency of procedures, with effective legal protection of integrity whistleblowers.

– Increasing the level of interoperability between public institutions regarding the exchange of data on public contracts and economic operators, through complete digitalization.

– Integrating international recommendations (GRECO, OECD, UNDP) into national anti-corruption strategies, with annual public reporting on the progress of implementation and independent assessments of the impact of the measures taken.

– Internal and external audit, as well as anonymous reporting, are essential complementary mechanisms in the early detection of irregularities.

– Continuous training of civil servants involved in the procurement process in the field of ethics, compliance and fraud prevention, regarding international good practices and new technologies in procurement by including these components in mandatory professional training curricula.

By applying these recommendations and capitalizing on international lessons, the Republic of Moldova can significantly reduce the risks associated with fraud and corruption.

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