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FACULTATEA DE ȘTIINȚE ECONOMICE ȘI JURIDICE
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***"THE IMPACT OF LEGISLATIVE CHANGES ON THE
LEGAL AND ADMINISTRATIVE MECHANISMS FOR
GUARANTEEING EU FUNDAMENTAL RIGHTS"***

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CONTENTS

FOREWORD.....	7
----------------------	----------

SECTION I - PUBLIC LAW

EUROPEAN UNION POLICY ON MIGRATION AND ASYLUM....	11
--	-----------

Cătălin Andruș

Lucian Ivan

Alexandra Ivan

THE OBLIGATION OF PROMPTNESS AND THE PROSECUTOR'S LEGAL TOOLS IN CRIMINAL INVESTIGATION	24
--	-----------

Adriana Bețișor

SOME CONSIDERATIONS ON THE GUARANTEEING AND DEFENDING HUMAN RIGHTS IN ROMANIA THROUGH FREE ACCESS TO JUSTICE	35
---	-----------

Gheorghe Bonciu

EUROPEAN ARREST WARRANT AND FUNDAMENTAL RIGHTS: THE IMPACT OF RECENT LEGISLATIVE REFORM...	52
---	-----------

Andra Florentina Calu

CRIMINOGENIC FACTORS OF COMPUTER FRAUD - CONCEPTUAL APPROACHES AND CHARACTERIZATION	65
--	-----------

Radion Cojocaru

Natalia Donica

ETIOLOGY OF ONLINE SCAMS FROM A CRIMINOLOGICAL PERSPECTIVE.....	81
--	-----------

Natalia Donica

THE LEGAL PROFESSION BETWEEN SAFEGUARDING THE FREEDOM OF DEFENSE AND UNLAWFUL INTERFERENCE: LEGISLATIVE AND INSTITUTIONAL PERSPECTIVES IN THE REPUBLIC OF MOLDOVA	94
--	-----------

Adriana Eșanu

Tatiana Vizdoagă

**REVOCATION OF THE COOPERATION AGREEMENT IN
LIGHT OF THE NEW AMENDMENTS TO THE CRIMINAL
PROCEDURE CODE OF THE REPUBLIC OF MOLDOVA 108**

Iulia Ghetivu

**THE RIGHT TO PROPERTY AND MECHANISMS FOR
RECOVERY OF CRIMINAL ASSETS IN THE LEGISLATION OF
THE REPUBLIC OF MOLDOVA FROM THE PERSPECTIVE OF
FUNDAMENTAL RIGHTS PROTECTION AND THE
EFFECTIVENESS OF COMBATING CRIME 122**

Petru Harmaniu

**BRIEF CONSIDERATIONS REGARDING THE RESPECT FOR
HUMAN DIGNITY IN CRIMINAL PROCEEDINGS..... 130**

Raluca-Viorica, Lixandru

**THE DEFENDER AND THE EFFECTIVE EXERCISE OF THE
RIGHT TO DEFENSE IN CRIMINAL PROCEEDINGS: LEGAL
AND JURISPRUDENTIAL DIMENSIONS 138**

Catalina Oganesean

**FREEDOM OF EXPRESSION AND THE RIGHT TO INFORMATION
– FUNDAMENTAL HUMAN RIGHTS RECOGNIZED
AT EUROPEAN AND INTERNATIONAL LEVEL 149**

Alina V. Popescu

SECTION II - PRIVATE LAW

**CONSIDERATIONS REGARDING THE PRIVACY AND
PROTECTION OF PERSONAL DATA IN THE CONTEXT OF
CREATING THE EUROPEAN HEALTH DATA SPACE..... 161**

Maria - Iuliana Cebuc

**STATE AID MANAGEMENT OPTIMIZATION IN ROMANIA
AND THE POTENTIAL OF ARTIFICIAL INTELLIGENCE (AI) . 170**

Alina Ioana Nicolaescu (Alexandru)

Constanța Popescu

PRACTICAL ASPECTS OF OCCUPATIONAL SAFETY..... 176

Isabela Stancea

**CRIMINAL PECULIARITIES IN PREVENTING MONEY
LAUNDERING IN THE REPUBLIC OF MOLDOVA: PROBLEMS
AND FUTURE SOLUTIONS 182**

Daniela Șoimu

FOREWORD

Annual Scientific Conference "LAW AND PUBLIC ADMINISTRATION", 15th Edition

"The impact of legislative changes on legal and administrative mechanisms for guaranteeing fundamental EU rights"

Now in its anniversary edition, after a brief hiatus caused by the restrictions generated by the pandemic that has disrupted the world since 2020, the conference organized by the "Constantin Brâncoveanu" University of Pitești on May 26, 2025, set out to achieve, and succeeded in doing so, in our opinion, to achieve not only a qualitative leap, but also a coherence of the topics debated by specialists in law and public administration, revealing not only a new and broad dimension of the scientific concepts addressed, but also an integrated perspective of the inclusion of these sciences in the dimension of EU law.

It should be noted that previous editions of this conference have enjoyed the honorable presence of specialists who have presented and debated topics of interest both for the doctrinal approach to constantly evolving concepts; thus encouraging both researchers and practitioners of law and public administration to discover the most effective approaches, but which depart from what some of the most prominent professors, notably Ioan Chelaru (*"The Cultural Dimension of Law. Recent Studies,"* Trend Publishing House, Pitești, 2024, pp. 45-52) call the "crisis of law," defined by the lack of its cultural dimension manifested in recent years.

Of course, previous editions of the event have been successful and widely attended, in partnership with researchers from widely recognized universities, the results being reflected in the published conference proceedings, which not only meet the formalized criteria of quality and efficiency, but also reflect the continuous dynamism of law as the foundation of society and the state.

The latest edition of the event, the 15th, set out to achieve, and succeeded in doing so, both through its generous theme - ***"The impact of legislative changes on the legal and administrative mechanisms for guaranteeing the fundamental rights of the EU,"*** and the participation of prestigious researchers affiliated with many universities in the country and in the Republic of Moldova, to bring together and acquire greater consistency, fully demonstrated by the depth and academic rigor of the papers presented, but also by the lively debates, doctrinal boost, and practical application.

The generous theme of the conference was not conceived and chosen by chance, but resulted from significant changes in the legislative paradigm, in particular in EU law, the new approach to sectorial legislation by the EU legislator, with a particular focus on fundamental rights. This assertion is supported by the omnipresence of new EU legislation, which offers new opportunities for the legal professions (whether purely legal or public administration professions) in the context of the reform of legal culture as a result of events involving far-reaching changes. These include the new perspectives created by the SARS-COV2 pandemic, the evolution of artificial intelligence, new technologies, but also the energy crisis, governance and social issues, and the war in Ukraine. Only legal science will be able to provide an adequate response to these problems, transcending the European character of law, because only by respecting the values of the rule of law and fundamental rights can we speak of the fair application of the ethical principles of the legal system, the integrated construction of the new legal order, and the adaptation and preservation of the ethical standards of the legal and judicial systems. These principles represent not only a real moral compass, absolutely and imperatively necessary for maintaining ethical standards in any field, but also a reference point for the new European construction of which Romania is an integral part.

The reconfiguration of the entire EU legal system was one of the recurring themes of the conference, addressed in most of the papers, with the focus on fundamental rights, whose exceptional value cannot be underestimated and requires a new reconfiguration not only in legal science (as the foundation of any society), but also a new repositioning of the legal professions, including those specific to public administration, in relation to the substantial changes that are constantly taking place and which amply demonstrate that law (in general) and fundamental rights (in particular) are of paramount importance in any construction whose foundation is, and must be, law and fundamental values.

It is inconceivable to imagine any other way of reconfiguring, regardless of the major changes taking place at a speed we have not seen before in the last 3-4 years, in the dynamics of new events, these being the values recognized and respected by the wonderful and "old" European continent, of which Romania is an integral part and, implicitly, the Romanian education system.

Hence, in the author's humble opinion, there is an urgent need to reconfigure the process of building, valuing, and recognizing legal thinking and legal culture, with new coordinates and realities. And the answer to these needs will always remain the "constant of law," as Tudor Avrigeanu remarkably stated (Socialist Pandectism and Social Order. Traian Ionașcu, Eugen A. Barasch and

"The Problem of the Constants of Law," Scientific Annals of the "Al. I. Cuza" University of Iași, Volume LXIII, Legal Sciences, 2016, No. II, https://pub.law.uaic.ro/files/articole/2016/volii/2016_ii_3.1.avrigeanu.pdf - The author rightly affirms the validity of the idea expressed by Yolanda Eminescu (an idea that is still fully valid today): "As consistent as she is with the pandectist line, and as inadequate as she is to political proclamations, Yolanda Eminescu ends up prescribing in 1964 precisely to socialist legal science the task of waging "a determined struggle both against the denial of subjective rights as an independent category and against theories that propose replacing these rights with the category 'function' of 'obligation' or 'legal situation', which are nothing more than attempts at theoretical justification for trampling on formal subjective rights, proclaimed by the bourgeoisie during the period when it played a progressive role" – (Eminescu Y., The Theory of Subjective Rights in Contemporary Bourgeois Literature, SCJ 2/1964, pp. 295-326, 297)) and the recognition, enshrinement, and guarantee of fundamental rights, as the conference participants emphasized.

Therefore, this conference laid the foundation for future scientific events that our university will organize, nurturing the hope of its internationalization and, implicitly, the growing value of the university.

We extend our warmest thanks to all participants !

Lecturer PhD Simona Franguloiu

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EUROPEAN UNION POLICY ON MIGRATION AND ASYLUM

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***Abstract:** In 2015, the European Union faced an unprecedented crisis of irregular migrants in European history. Managing this migration phenomenon required unprecedented measures at EU level, which were also reflected in European and national legislation. This paper aims to provide a comprehensive analysis of EU legislation in the field of migration and asylum, as well as the mechanisms developed at Community level to prevent and combat illegal migration. It also aims to analyse the vulnerabilities that exist at EU level with regard to the phenomenon of illegal migration and to make concrete proposals for optimising the existing legislative framework. A challenge for EU decision-makers is to take measures, including legislative measures, to reduce illegal migration by coherently analysing the factors that generate this phenomenon and have an impact on the security of the European Union.*

INTRODUCTION

The phenomenon of migration at global level constitutes both a risk for certain developed countries in terms of irregular migration, which puts additional pressure on their social systems, and an opportunity in terms of legal migration, which brings labour to countries with negative population growth. In this context, the Member States of the European Union are one of the main destinations for migrants, who see opportunities to work in these countries to support their families in their countries of origin.

The summer period in Europe normally brings calmer seas, which in turn attracts more immigrants crossing the Mediterranean Sea with the aim of reaching the European Union. This situation requires alert measures in EU Member States that are on the front line of the migration phenomenon. For example, in 2025, Greece recorded a fourfold increase in the number of migrants arriving on its outlying islands due to a new active route from Libya in the south. More than 7,000 people arrived in the first half of 2025, compared to around 1,750 in the same period in 2024. In response, the Greek authorities warned of a "*sharp increase in illegal arrivals by sea from North Africa*" and,

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in July 2025, the Greek Parliament voted to suspend asylum procedures for migrants arriving by sea from North Africa for three months.

Other countries have also seen a significant increase. Crucially, this increase is explained not only by favourable weather conditions, but also by several overlapping factors, some of which reflect long-term structural pressures affecting the Middle East and North Africa. In fact, migration is mainly the result of economic and geopolitical factors. Geopolitical turmoil, characterised by multiple military conflicts, particularly in the Middle East and Africa, is fuelling migration from these regions.

New and old conflicts remain the main factor driving population displacement. The war in Sudan, which broke out in 2023, has forced millions of people to flee their homes. Persistent violence in the Sahel, ongoing instability in Syria and deteriorating security conditions under the Taliban regime in Afghanistan also continue to drive people towards EU Member States. Even regions without large-scale conflict have become important departure points. For example, eastern Libya remains unstable and poorly governed, allowing criminal organisations specialising in illegal trafficking of migrants to operate with impunity. As a result, Libya has become a key departure point for boats bound for southern Europe. Many of those arriving in Greece – particularly on the islands of Crete and Gavdos – are refugees from war-torn countries. (Frontex, 2024)

Severe economic decline is another major force driving migration. Tunisia, for example, is in the midst of a financial crisis, with rampant inflation and rising unemployment, which has pushed Tunisians and migrants from sub-Saharan Africa to risk dangerous crossings to Europe. A similar economic situation can be seen in Lebanon and Turkey, where currency collapses and poor public services have diminished quality of life and increased outward migration. In West Africa, a lack of opportunities – exacerbated by the lingering effects of the COVID-19 pandemic and persistent governance challenges – has prompted many young people in countries such as Senegal, Mali and Côte d'Ivoire to undertake the dangerous transatlantic journey to Spain. These economic pressures fuel what experts call "mixed migration": movements that include people fleeing persecution and people seeking a better economic future.

Environmental degradation is also playing an increasingly important role in driving migration. In the Middle East and Africa, prolonged droughts, extreme heat and poor harvests have undermined livelihoods and food security in rural areas. In many cases, climate-related difficulties push people to migrate first within their own country, to cities, and eventually abroad. The Sahel, already unstable due to armed conflict and weak governance, faces intensifying competition for resources as climate change

reduces the availability of land and water. The convergence of these crises – war, economic collapse and environmental degradation – has created the conditions for massive population movements. In this context, this migratory phenomenon, which is generated or significantly influenced by the degradation of environmental factors, is called climate migration, a phenomenon that will be increasingly accentuated by substantial climate change in the coming period.

I. PREVENTIVE MEASURES AT EUROPEAN UNION LEVEL

The looming migratory pressure and the political and social discontent it generates have forced the European Union to take preventive measures to significantly reduce this phenomenon, which also has an impact on European security.

In 2024, it approved a historic agreement called the New Pact on Migration and Asylum, which aims to ensure a better balance between responsibility and solidarity, guaranteeing that no country bears a disproportionate burden. The pact also includes rules to simplify asylum procedures, especially at the bloc's external borders, speed up the return of people who aren't eligible for protection, and expand cooperation with non-EU countries to manage migration flows more effectively. A key feature is a new solidarity mechanism that allows Member States to contribute either by hosting relocated asylum seekers or by providing financial and operational support. However, the agreement will not enter into force until 2026, so Member States are effectively covering their risks by adopting a series of crisis response policies to deal with migration flows. How they proceed now will likely determine how the pact is implemented next year.

Greece

Greece's decision to suspend the processing of asylum applications for migrants arriving by sea from North Africa for three months is a telling example. Approved by the Greek parliament by 177 votes to 74, the emergency measure was presented as a response to the dramatic increase in arrivals in Crete and other southern islands. Prime Minister Kyriakos Mitsotakis defended the suspension as "difficult but absolutely necessary" to manage the influx at one of Europe's southernmost borders.

Under this policy, Greek authorities are empowered to repatriate arrivals without initiating asylum procedures – a drastic departure from established EU norms and the most overt form of deterrence adopted by an EU member state in recent years. The measure follows a broader trend: after relatively low arrivals after 2016, Greece recorded 48,721 illegal entries in 2023 (an increase of almost 160% compared to the previous year) and over

60,000 in 2024. The emergence of a new route between Libya and Crete has exacerbated the crisis.

Since then, Greece has deployed military vessels near the Libyan coast and announced plans to build a specialised reception centre in Crete, despite local opposition. Human rights organisations and international bodies, including the United Nations High Commissioner for Refugees, have strongly criticised this policy, considering it illegal and discriminatory and warning that it violates the right to asylum. Greek officials counter that the measure is temporary and targeted, citing pressure on rescue and reception operations. In any case, this episode has intensified the debate in Europe on the limits of unilateral national action. (Frontex, 2024)

Italy

Italy has adopted equally harsh measures, without officially suspending the right to asylum. A major initiative launched in 2023 was an agreement with Albania to process up to 3,000 male asylum seekers in offshore centres on Albanian territory. Although the centres operate under Italian jurisdiction, this measure has faced multiple legal obstacles. At the end of 2024, Italian courts declared part of the scheme illegal, and the case was referred to the European Court of Justice. Despite legal obstacles and the fact that the centres remain underutilised, the Italian government insists that the plan will continue.

Domestically, Italy declared a "state of emergency" on migration in 2023 after receiving 157,600 arrivals by sea, the highest number since 2016. Subsequent enforcement measures, including repatriation agreements and increased maritime surveillance, contributed to a nearly 60% reduction in arrivals in 2024. However, seasonal increases in 2025 have tested the sustainability of these gains.

The government took harsh measures against non-governmental humanitarian organisations, restricting multiple rescue missions and assigning distant ports of disembarkation. Between early 2023 and the end of 2024, Italian authorities detained rescue ships dozens of times and banned NGO planes from landing. Meanwhile, Rome continues to support the Libyan coast guard and has promoted EU-level agreements with Tunisia to reduce migration, despite human rights concerns. (Frontex, 2024)

Spain

Spain, which manages migration through its land borders in Ceuta and Melilla and maritime routes to the Canary Islands, has responded by stepping up external cooperation and dispersing migrants arriving on its territory. In 2023, Spain recorded 56,800 irregular arrivals, an increase of 82% compared to 2022, with almost 40,000 arriving in the Canary Islands alone. This number rose again in 2024, causing logistical tensions and

political friction between the central government and regional authorities. Madrid's strategy focused on diplomacy and burden-sharing. Agreements with Senegal, Mauritania and Morocco allowed for joint patrols and repatriation efforts, with the European border agency Frontex providing assistance along routes from West Africa.

These efforts have already had some success: in the first half of 2025, illegal entries fell by around 31% compared to the same period in 2024.

Although Spain has not suspended asylum, as Greece has done, it is applying a strict border regime. The practice of 'devoluciones en caliente' – immediate return to the fences in Ceuta and Melilla – continues under the legal provisions of 2015. The approval rate for asylum applications in Spain was only 18.5% in 2024, the lowest in the EU. However, Spain has demonstrated a humanitarian approach at the national level, announcing at the end of 2024 a plan to regularise approximately 300,000 undocumented migrants per year over three years. This combination of strict external control and internal integration sets Spain's approach apart from that of other southern Member States. (Frontex, 2024)

Malta

Malta has adopted one of the most restrictive positions in the EU, effectively closing its sea gates to asylum seekers. In 2024, a record number of 238 migrants landed in Malta. This is due to an unofficial policy of avoiding rescue operations and transferring responsibility to neighbouring countries. Numerous cases have been documented in which Maltese authorities failed to respond to distress calls in their search and rescue zone, relying instead on NGO vessels or Italian intervention. NGOs and EU partners have criticised Malta's strategy as de facto 'refusal' through inaction. Although no law officially suspends asylum, Malta's tactics – non-rescue, coordination with the Libyan coast guard and strategic avoidance – have effectively closed its borders.

Domestically, Malta enforces strict detention policies for the few who arrive, drawing criticism for poor conditions and prolonged detention. While this approach has minimised domestic political fallout, it has put increased pressure on Italy and other neighbouring countries and raised serious questions about Malta's compliance with its international obligations on maritime law and asylum. (Frontex, 2024)

II. MEASURES TAKEN BY EU MEMBER STATES IN THE FIELD OF ASYLUM

Although no other EU Member State has yet adopted an official suspension of asylum like Greece, many countries are moving towards more restrictive policies. In Central and Eastern Europe, Hungary and Poland

have long blocked access to asylum through legal and physical barriers. In Northern Europe, Denmark has adopted legislation allowing asylum applications to be processed in third countries, following the Italian model in Albania.

Refoulement has also become common practice along the EU's eastern and south-eastern borders, with countries such as Croatia and Lithuania engaging in illegal summary returns. These tactics reflect a broader willingness to violate EU asylum rules when national governments deem it politically necessary.

Greece's three-month suspension of asylum is the clearest and most formal challenge to the EU asylum framework, but it is part of a broader trend of tightening national policies. Italy's offshore processing of asylum claims, Spain's containment partnerships and Malta's tacit discouragement all reflect a common strategic shift: discouraging arrivals by limiting access to protection. It remains to be seen whether these measures represent temporary crisis management or the new normal of EU migration policy, especially as the bloc prepares to implement the New Pact on Migration and Asylum in 2026.

More importantly, the question remains whether the unilateral and often restrictive actions taken by Greece, Italy and other countries are in line with the spirit of the pact or whether they undermine it. Greece's decision to suspend the processing of asylum applications for migrants arriving by sea from North Africa has drawn criticism from legal experts and EU officials, who argue that it violates existing EU law, which requires individual assessment of asylum applications. Although the pact allows for limited flexibility in crisis situations, it does not allow for general suspensions. Greek officials defend the measure as a temporary solution to overwhelming pressure, citing the absence of solidarity mechanisms in the current system.

Italy's agreement with Albania on outsourcing asylum processing is also under scrutiny. EU law does not categorically prohibit outsourcing, but requires third countries to respect certain human rights standards, which Albania may not fully meet. Although Italy's approach reflects the pact's intention to speed up procedures and reduce pressure on border states, its unilateral nature poses risks to the cohesion of the EU system. A pending ruling by the European Court of Justice could determine whether such outsourcing is compatible with EU law.

On border control, however, national policies often reflect the pact's objectives. Greece's extension of fences and Italy's cooperation with Libyan patrols are in line with the pact's focus on reducing illegal entries. Even Malta's controversial no-intervention rescue policy highlights why the pact's

solidarity mechanism is essential: without shared responsibility, countries will resort to isolation.

The most important challenge is solidarity itself. Although the pact obliges member states to support countries under pressure – either by accepting asylum seekers or through financial contributions – many countries continue to rely on unilateral or bilateral solutions. Hungary and Poland have categorically opposed the pact, and by the end of 2024, more than half of EU member states had not yet submitted implementation plans. Without full acceptance, the pact could be undermined before it even enters into force.

Ultimately, current national measures may be more a reflection of a system in transition than a direct challenge. The longer these ad hoc approaches continue, the more difficult it will be for the EU to deliver on its promise of a collective migration policy.

Failure by certain Member States to comply with EU migration rules on the grounds of preserving national security is not a long-term solution, insofar as the European Union is an area that must strictly respect human rights, including in relation to migration and the protection of migrants' rights. In this context, measures need to be taken at the highest level of the EU to compel Member States to comply with the legal provisions in force and to prevent any abuse of migrants' rights.

III. CHALLENGES FOR THE EU IN THE COMING PERIOD

Border and migration management in the EU will face multifaceted challenges in the coming decade. European border control should prepare for a turbulent decade and be ready for threatening scenarios, with innovative measures needed to secure the EU's borders while strictly complying with international legal standards in the field of migration. (Lechner, 2019)

Migration phenomena are characterised by multiple causes, which makes it particularly difficult to formulate policy responses. Migration decisions are influenced, among other things, by individual aspirations and capabilities, the effects of megatrends, societal adaptation and coping strategies, and legal/illegal opportunities for cross-border mobility. Migrants may decide predictably to stay or move, but they may also act in unexpected ways. This shows, at least in part, why migration management is and will remain a particular challenge for all countries of origin, transit and destination. (Cha, 2023)

The Pact on Migration and Asylum, together with the amendments to the Schengen Borders Code, will improve the response of border control and migration management authorities to the instrumentalisation of migrant flows, health crises and secondary movements. The formulation and

implementation of a comprehensive migration policy, together with effective coordination and cooperation between policy areas and with internal and external stakeholders, will become essential requirements. Migration pressures are likely to increase over the next decade, requiring substantial improvements in overall preparedness and crisis preparedness. European IBMs will need to become more resilient, minimising operational and legal vulnerabilities. Border and migration management in the EU will benefit from improvements in all components of the Integrated Border Management (IBM), which will enable the development of more effective operational capabilities and responses (e.g. infrastructure, training, surveillance, information exchange, intelligence reporting and cooperation with third countries).

Strengthening EU border controls at border crossing points and surveillance of border sections, developing analytical, early warning and forecasting, as well as crisis response addressing cases of migration being used as a tool, can help avoid some of the most serious effects of disproportionate migration flows and the destabilisation of Member States by hostile third countries and non-state actors. In addition, border and migration management in the EU will become more effective, humane and resilient in the future by adopting a broader view of border and migration phenomena worldwide. Strategic foresight and forward thinking could make valuable contributions by providing a broader, future-oriented and achievable perspective. (Galeotti, 2022)

Technological advances are likely to play an important role in reshaping future migrant smuggling activities. Typically, over 90% of illegal migrants arriving in the EU use migrant smuggling services for part or all of their journey. With the proliferation of encrypted communication channels, blockchain-based transactions and sophisticated surveillance systems, traffickers are likely to modify their methods to increase their efficiency and evade detection more effectively. (Leonard, 2021)

The war in Ukraine, the civil wars in Libya and Syria, the instability in Lebanon and the conflict between Iran, Iran's proxies in the region (e.g. Hezbollah, Houthis) and Israel will have a serious impact on migration and refugee movements in the future. The top 20 source countries for illegal migration and the main migration routes to the EU are likely to remain the same over the next decade. Previous Frontex analyses have found that the composition of the top 20 nationalities has remained largely unchanged in recent years, with fluctuations from year to year only in the ranking of nationalities detected at the EU's external borders. The main migration routes – namely, the Eastern, Central and Western Mediterranean routes and the West African route – are likely to remain the same.

The AI (Artificial Intelligence) revolution will have both positive and negative implications for EU border management. While facilitating crime and other threats to the EIBM (European Integrated Border Management), including cyber attacks against border infrastructure, AI applications will be used to improve the capabilities of Frontex and national authorities (e.g. AI-based systems and tools for border control, border surveillance and information/risk assessment).

Cross-border inequalities and their effects will receive political attention in order to address foreign policy issues, including aspects related to EU border management and migration. Addressing the root causes of international migration, cross-border crime and terrorism also relates to the pervasive influence of inequalities and conflictual social life. At the heart of inequalities lie various asymmetries, elitist and oligarchic privileges, the unfair distribution of wealth, exploitation, limited opportunities, injustices and human rights violations that create public order phenomena, discontent and social unrest. Assessing the impact of inequalities in third countries as one of the world's major problems (e.g. the 17 sustainable development goals of the UN's 2030 Agenda, crimes of the powerful, extreme corporate and private wealth) will be necessary to inform better policies and operational responses.

In the future, the European IBM should be more aware of the social damage caused by inequality in third countries in order to fulfil its mission more effectively and humanely. A more unequal world, characterised by extreme concentration of power, wealth and resources, will exacerbate levels of inequality and conflict, as well as negative effects on thematic areas (e.g. migration, cross-border crime, terrorism). Growing inequalities, combined with armed conflicts, economic instability and social unrest, will continue to drive economic migrants and refugees towards Europe in search of a better life, via existing and new routes. This will increase pressure on EU border management. (Wigell, 2019)

International governance systems are crucial to solving the world's major problems, but ongoing geopolitical conflict will hamper the work of international organisations. As a result, the role of these organisations will be largely symbolic, as trust and cooperation between countries will be severely lacking. International cooperation through United Nations bodies and agencies will be unable to resolve major issues of concern. Even though there are many actors in world politics, they will not be able to resolve the problem of governance and international order in a hostile multipolar world. However, there will be an increasing emphasis on transparency and equitable participation in global forums, as well as collective pressure to

find effective solutions to global problems (e.g. geopolitical conflicts, climate change, inequalities). (Bob, 2019)

Despite existing power asymmetries, the influence of the global East and South will continue to grow over the next decade, creating a de facto multipolar system. Emerging economies and developing countries in the global South will maintain a largely neutral position in the geopolitical conflict between the US, the EU, Russia and China. They will keep their distance from the conflict and its harmful effects, demonstrating cautious engagement and geopolitical pragmatism. They will promote their national interests by focusing on key regional developments and cooperation initiatives (e.g. BRICS, the Shanghai Cooperation Organisation). The geopolitical influence of China, India, South Africa, Brazil and other countries in the Global South is likely to grow as their socio-economic, technological and military power develops.

The structural inequalities and asymmetries underlying the North-South divide, which were identified in the 1980 Brandt Report, still persist. As a result, the political and economic discontent of the South will continue to put pressure on international politics. South-South cooperation is likely to develop over the next decade, and it remains to be seen whether the G7 will continue to evolve and assert a more influential geopolitical and geo-economic role. Reducing the existing North-South divide and rationalising cooperation are likely to re-emerge as major political issues. But the development of North-South cooperation should revisit those issues that remain unresolved.

Only concerted and robust action by the global community on climate change will be able to avert a global ecological catastrophe. The phasing out of fossil fuels and the diversification of energy sources should be a carefully managed process to avoid potential risks to energy security or economic crises. The Executive Director of the IEA (International Energy Agency) has stressed the need to develop clean energy (e.g. renewable energy sources, energy-efficient technologies, nuclear energy). However, an important oil industry conference echoed the view of a senior oil executive that "we should give up the fantasy of phasing out oil and gas", pointing to the oil industry's massive investments in the face of growing industrialisation and the energy needs of Asian and African countries. The production of oil companies from existing and new oil and natural gas fields is expected to quadruple by the end of this decade. Therefore, the global economy's heavy dependence on oil and natural gas, as well as the vested interests of large oil corporations and oil-producing countries, cast doubt on the practical feasibility of ending the fossil fuel era in the coming decades. However, social pressure will intensify the responsibility of governments to

take measures to effectively address climate change. Any shortcomings will be considered human rights violations, leading to litigation.

Environmental degradation and resource scarcity will intensify over the next decade, becoming sources of geopolitical conflict, intense economic competition for finite resources and energy crises. These problems will also exacerbate socio-economic inequalities. Our societies' excessive use of the planet's ecological resources is destabilising its capacity to regenerate. The ecological limit has been exceeded over time, partly due to global population growth. The Anthropocene era – characterised by large-scale human activities that alter the physical environment – is destroying the planet on a scale never seen before. Human-induced changes in the Earth's atmosphere, oceans, biosphere and geochemistry are being closely examined by the scientific community. Scientists have urgently called for action to address the economy, geopolitics and security, climate change, urbanisation and consumerism. Securing critical raw materials (CRMs) for EU industrial production (including the green transition) through recycling and mining will be a challenge for the EU's strategic autonomy.

The interaction of the economy with certain megatrends will have knock-on effects, exacerbating economic challenges in the turbulent decade ahead. All economies are highly interdependent within global economic and financial systems. Economies depend on and interact in highly complex ways with numerous variables, such as the production of and trade in energy sources, intense geo-economic competition, rising global debt (private and public), hostile geopolitics and security conflicts, disruptions in international supply chains, rising inflation and cost of living, growing socio-economic inequalities, the transition to green energy and transformational technological advances (e.g. the AI revolution). These and other factors will require innovative interdisciplinary research and effective policy responses. As the world moves into new and uncharted territory, driven by the evolution of all megatrends, it will be essential to identify major risks (including unknown ones) and manage potentially catastrophic cascades in the economy. (Veblen, 2009)

IV CONCLUSIONS

In the next decade, it will be difficult to manage thematic phenomena due to hostile geopolitics, security instability and the complex interaction of megatrends. EU border and migration management policies will need to be updated in response to major developments and the need to address threats, challenges and vulnerabilities to national security (e.g. migration, cross-border crime, hybrid interference). In this context, Frontex needs to make the necessary organisational changes to improve its

operational capabilities and performance (e.g. standing corps, infrastructure development, return system, information/risk analysis, cooperation with third countries).

Conflict has characterised the entire history of humankind. The global community is enjoying extraordinary progress in this area and, at the same time, facing existential risks unlike any other period in history. How can we rise above zero-sum (win-lose) thinking? How can we control the regressive human behaviours and excesses that underlie climate change, the exceeding of ecological limits and other major problems? International cooperation is the answer. It can not only prevent catastrophic risks, but also contribute to the articulation and implementation of a grand vision for humanity.

A number of effects of megatrends (e.g. economic difficulties, technological advances, security crises) will affect international migration, crime and terrorism. Armed conflicts in the EU's neighbourhood and hybrid interference by certain third countries (e.g. the instrumentalisation of migration, arms trafficking) will affect the EU's internal and external security. Increasing trends towards militarisation will also influence EU border management and security, particularly in sections of the external border neighbouring conflict areas. The performance and effectiveness of relevant EU organisations will depend significantly on the quality of international relations and the level of cooperation between the EU and third countries.

Currently, there is a better understanding of migration processes, such as broader structural forces, social changes and critical events that can influence migration decisions. Even so, the causal factors underlying migration trends are difficult to identify, disentangle from highly complex socio-economic processes and transformations, and address effectively in third countries or countries of transit and destination. Migration phenomena are characterised by multiple causes, which makes it particularly difficult to formulate policy responses. Decisions on migration are influenced, among other things, by individual aspirations and capabilities, the effects of megatrends, societal adaptation and coping strategies, and legal/illegal opportunities for cross-border mobility. Migrants may decide predictably to stay or move, but they may also act in unexpected ways.

This shows, at least in part, why migration management is and will remain a particular challenge in practice for all countries of origin, transit and destination.

In the coming period, the legal framework at European Union level needs to be adapted in strict accordance with the emerging risks posed by illegal migration. Thus, if it is found that certain Member States are taking measures outside the common legal framework to protect their security interests, the appropriateness of maintaining these legal rules should be

reviewed. Furthermore, certain Member States (e.g. Hungary and Poland) have expressed opinions contrary to the EU Pact on Migration and Asylum, and clarification and harmonisation of views among all EU Member States is needed in order to take a sustainable decision in the medium and long term.

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THE OBLIGATION OF PROMPTNESS AND THE PROSECUTOR'S LEGAL TOOLS IN CRIMINAL INVESTIGATION

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Abstract:

In recent decades, European judicial systems, including that of the Republic of Moldova, have faced a continuous increase in the volume of criminal cases, a phenomenon that has led to significant delays in their resolution. In this context, concern over the duration of criminal proceedings has become a matter of major importance, both in terms of safeguarding the fundamental rights of individuals involved in criminal processes and in maintaining public confidence in the punitive function of the state and the efficiency of the criminal justice system.

Excessive duration of criminal investigations represents one of the most frequent criticisms directed at the functioning of the criminal justice system, being the result of a cumulative set of factors, both objective and subjective in nature.

The high degree of complexity in certain criminal cases - particularly those involving economic and financial crimes, cybercrime, money laundering, banking fraud, and other transnational offenses - requires the use of advanced evidentiary procedures, such as forensic expert assessments, special investigative techniques, and international letters rogatory. While these procedural instruments are indispensable, their application inevitably leads to a prolongation of the criminal investigation process and significantly affects the principle of promptness in criminal proceedings.

In this framework, it becomes evident that one of the fundamental responsibilities of the public prosecutor is to ensure the effective organization of the criminal investigation in a manner that guarantees procedural expediency, without compromising the thorough, objective, and lawful examination of all relevant circumstances of the case. Striking a fair balance between procedural efficiency and the protection of procedural rights is an essential prerequisite for the realization of a modern, equitable, and rule-of-law-compliant system of criminal justice.

Keywords: criminal prosecution, prosecutor, promptness, procedural time limit, procedural balance.

Introduction

In recent decades, European judicial systems have faced a significant increase in the number of criminal cases, which has consequently led to prolonged trial durations. The Republic of Moldova is no exception, experiencing increased pressure on both the criminal investigation authorities and the courts. In this context, the requirement to conduct criminal investigations within a reasonable time frame has gained particular importance.

The principle of promptness, enshrined both in national legislation and in the case law of the European Court of Human Rights, entails conducting

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criminal procedures within a period that does not infringe upon individual rights while simultaneously allowing for an effective investigation. The role of the prosecutor, as an active participant in the criminal investigation, is essential in achieving this objective.

Respecting the reasonable time requirement in criminal proceedings is not only a procedural guarantee but also a fundamental condition for maintaining public confidence in the justice system. Unjustified delays in criminal investigations can lead to the compromise of evidence, affect the fairness of the trial, and even result in the inability to hold guilty parties criminally liable. On the other hand, prolonged proceedings seriously impact the rights of the investigated person, who may remain under restrictive procedural measures for an extended period without a final decision.

In this regard, the prosecutor is responsible not only for conducting and exercising criminal investigations but also for acting promptly and efficiently in evidence management. Rigorous planning of prosecutorial actions, prioritization of cases, avoidance of formal or redundant actions, as well as effective collaboration with other institutions involved in the criminal process, are factors that can contribute to accelerating the procedural progress.

Furthermore, ensuring genuine promptness in criminal investigations requires system reform, both regarding the human and logistical resources of the prosecutor's office and in terms of normative framework. Digitization of processes, simplification of procedures, and reduction of excessive formalism can represent important steps in this direction.

Respecting the principle of promptness in criminal proceedings is a requirement that cannot be ignored in a rule-of-law state. Striking a balance between efficiency and respect for the fundamental rights of the individual remains an ongoing challenge for the criminal justice system in the Republic of Moldova, with the prosecutor playing a key role in achieving this goal.

1. The Obligation of Promptness: Legal Basis and Practical Implications

The obligation of promptness constitutes a fundamental principle of a fair trial and reflects the need to balance the interests of the state in administering justice with the fundamental rights of individuals involved in judicial proceedings. This principle is not merely an abstract desire for efficiency but expresses a concrete normative requirement, with a dual recognition—both international and national—and significant practical implications in the conduct of criminal proceedings.

It has been stated that “this guarantee aims to ensure that justice is administered without delays that could undermine its credibility or effectiveness.”(Sudre, 2006, p. 290) On the other hand, “a criminal case

must not be unduly prolonged, as delays cause serious harm both to its resolution and to the fulfillment of its important social objectives.” (Volonciu, 1993, p. 127)

Article 6 § 1 of the European Convention on Human Rights (ECHR, 1950) expressly provides that “everyone is entitled to a fair hearing [...] within a reasonable time.”

The case law of the European Court of Human Rights (ECHR, 1950) has given an autonomous meaning to the notion of “reasonable time,” establishing a clear set of criteria for assessing the duration of proceedings: the complexity of the case, the conduct of the authorities, the behavior of the parties, and the importance of the case for the applicant. (*Wemhoff v. Germany*, 1968; *Neumeister v. Autriche*, 1968; *Stögmüller v. Austria*, 1969; *König v. Germany*, 1978; *Milasi v. Italy*, 1987; *Rouille v. France*, 2004; *Nakhmanovich v. Russia*, 2006; *Holomiov v. Moldova*, 2006; *Hajibeyli v. Azerbaidjan*, 2008; *Cravcenco v. Moldova*, 2008; *Matei și Tutunaru v. Moldova*, 2009; *Panzari v. Moldova*, 2009; *Chiarello v. Germany*, 2019 and other cases).

The High Court does not impose a fixed time limit but evaluates, on a case-by-case basis, whether the national authorities have fulfilled their procedural diligence obligations. Thus, excessive duration of the criminal investigation or judicial process may be qualified as a violation of the right to a fair trial, attracting state liability.

In the constitutional law of the Republic of Moldova, Article 20 paragraph (2) of the Constitution enshrines the principle of resolving cases “within a reasonable time,” closely linked to the right of free access to justice. From this perspective, promptness is not an optional procedural aspiration but an essential component of effectively guaranteeing the right to a judicial remedy (Constitution of the Republic of Moldova, 1994, art. 20(2)).

The Criminal Procedure Code of the Republic of Moldova provides in Article 20 paragraph (1) that “Criminal investigation and trial of criminal cases shall be conducted within reasonable time limits.” Being part of a provision with the value of a fundamental principle of criminal proceedings, this regulation has a mandatory character and applies to all stages of the criminal process, from the investigation phase to the enforcement of the sentence or judicial decision (Criminal Procedure Code of the Republic of Moldova, 2003, art. 20 (1)).

The same article contains criteria for assessing the reasonable time for resolving a criminal case, namely: “the complexity of the case; the behavior of the participants in the process; the conduct of the criminal investigation body and the court; the importance of the case for the interested party; and the victim’s age if under 18 years.”

Article 259 of the Criminal Procedure Code of the Republic of Moldova stipulates that “The criminal investigation shall be carried out within a reasonable time. Compliance with the investigation period in a particular case is ensured by the criminal investigation officer and the case prosecutor, taking into account the criteria for assessing the reasonable time provided in Article 20 paragraph (2) of the Criminal Procedure Code.” (Criminal Procedure Code of the Republic of Moldova, 2003, art. 259 and 20 (2)).

Furthermore, the Constitutional Court of the Republic of Moldova has emphasized in several decisions the fundamental character of this obligation, stressing that it is a fundamental principle of criminal proceedings. Thus, “(...) The principle of reasonable time in criminal proceedings represents an element of the application of the right to a fair trial. According to this principle, the criminal investigation authorities and the courts have the obligation to ensure the resolution of criminal cases within a reasonable time.” (Constitutional Court of the Republic of Moldova, Decision No. 3/2016, § 78).

From the perspective of international human rights norms, the obligation of promptness has a positive character: the state must not only refrain from unjustified delays but also ensure a legislative, administrative, and institutional framework capable of preventing such delays. This entails allocating sufficient resources to the courts and criminal investigation authorities, digitizing procedures, implementing internal control mechanisms regarding the duration of proceedings, among others.

The obligation of promptness transcends the purely procedural framework and imposes itself as a genuine systemic obligation of the state to organize justice in an efficient, predictable manner, in compliance with the requirements of the European Convention on Human Rights.

The duration of the criminal investigation phase represents an essential indicator of the efficiency of the criminal justice process, as this stage plays a decisive role in ensuring the parties’ right to a fair trial in accordance with the provisions of Article 6 of the ECHR (ECHR, 1950, art. 6). However, in practice, the frequent exceeding of reasonable time limits is observed, an aspect that can compromise the quality of the criminal justice process. The causes of this unjustified prolongation are multiple and can be classified into objective and subjective factors.

One of the most important objective factors determining the extension of the duration of the criminal investigation is the complexity of the criminal case, taking into account “the volume of the file, its subject matter, the large number of defendants, the large number of witnesses to be heard, the number and nature of the offenses.” (Udroiu, 2019, p. 47).

Thus, economic and financial crimes, money laundering, corruption, and transnational offenses involve a complicated legal and factual structure, requiring the analysis of large volumes of financial documents, tracking capital flows, conducting accounting and technical expertise, as well as hearing a considerable number of witnesses or perpetrators. In the case of transnational crimes, investigations often require the formation of international rogatory commissions and cooperation with foreign judicial authorities, which inevitably causes delays.

The administration of a large volume of evidence represents another objective cause of the extended duration of the criminal investigation. In large-scale criminal cases, identifying, preserving, evaluating, and correlating all evidence—including statements, wiretaps, IT searches, expert reports, or documents—requires laborious and time-consuming work. The larger the case file, the more arduous the procedural activity becomes, requiring rigorous planning and resources proportional to the case's level of difficulty.

In the context of globalization of crime, more and more criminal cases involve foreign elements. When judicial procedures in other states are necessary—such as obtaining evidence abroad, extraditing the accused, or identifying bank accounts—the criminal investigation authorities depend on international cooperation. This may suffer significant delays due to differences in legal systems, language barriers, administrative procedures, or the lack of an effective cooperation framework between authorities.

Limited resources of the criminal investigation authorities are a major subjective factor affecting the duration of the investigation. In this respect, the quality of human and logistical resources of these authorities is important. The lack of specialized personnel, staff turnover, a high caseload per prosecutor or investigation officer, as well as insufficient technical equipment contribute to delays in investigative activities. This phenomenon is often exacerbated by administrative bureaucracy, difficulties in obtaining expert reports within a reasonable time, and inadequate digital infrastructure for managing complex evidence.

The principle of promptness in criminal proceedings requires that procedures be carried out within a reasonable time, without affecting the procedural rights of the parties. In the context of an overburdened judicial system and the increasing complexity of criminal cases, the active role of the prosecutor in efficiently managing the investigation becomes central. Compliance with the reasonable time limit during criminal investigation is ensured by the prosecutor. The criminal procedural legislation of the Republic of Moldova (Criminal Procedure Code of the Republic of Moldova, 2003, art. 52) provides the prosecutor with a series of legal

instruments designed to counteract unjustified delays and contribute to the efficiency of the pre-trial phase of the criminal process.

Foremost among these is the procedural and organizational control of the criminal investigation. According to Article 52 of the Criminal Procedure Code of the Republic of Moldova (Criminal Procedure Code of the Republic of Moldova, 2003, art. 52), the prosecutor directs the activity of criminal investigation authorities, having the obligation to ensure the legality and validity of procedural acts. In this regard, the prosecutor is not merely a passive supervisor but an active procedural subject with managerial responsibilities over the investigation. The prosecutor can issue orders, instructions, and written directives by which they: set deadlines for performing investigative acts; request specific actions from the investigation authorities (searches, document seizures, hearings, etc.); continuously control the procedure for receiving and registering reports of crimes; require, for control purposes, criminal case files, documents, procedural acts, materials, and other data related to the crimes committed and individuals identified in cases under their supervision; order the joining or, if necessary, the splitting of cases; draft the indictment, provide its copy to the accused, and send the case to the competent court; impose the resolution of cases at a pace appropriate to their complexity and urgency.

This control mechanism helps discipline the procedural workflow and avoid blockages caused by the inactivity or inefficiency of the criminal investigation authorities.

The application of simplified procedures constitutes an effective tool in managing criminal cases.

When the legal conditions permit, the prosecutor may propose recourse to the procedure of the plea agreement (Arts. 505–507, Criminal Procedure Code of the Republic of Moldova, 2003), the cooperation agreement (Arts. 509³–509⁷ Criminal Procedure Code of the Republic of Moldova, 2003), the judicial agreement of public interest (Arts. 523¹–523⁴ Criminal Procedure Code of the Republic of Moldova, 2003), or the conditional suspension of the criminal prosecution, with subsequent release from criminal liability according to Article 59 of the Criminal Code (Arts. 510–512 Criminal Procedure Code of the Republic of Moldova, 2003), thereby contributing to the reduction of procedure duration.

By utilizing these mechanisms, the prosecutor can avoid the full conduct of a classical criminal trial, significantly reducing the duration of the procedure and relieving the investigative authorities and courts of cases where the essential facts are not contested.

In exercising the leadership function over criminal prosecution, the prosecutor has the possibility to apply objective criteria for prioritizing

cases, depending on: the gravity of the offense and the damage caused; the social danger of the crime; the impact on public order or national security; the existence of approaching statutes of limitations.

This approach allows for the efficient management of the workload and the allocation of resources to cases requiring urgent intervention. At the same time, prioritization contributes to respecting the principle of proportionality and ensures a swift criminal response in cases of utmost public interest.

In complex cases, especially those involving economic-financial components or elements of foreign jurisdiction, the prosecutor has legal instruments available for cooperation with other authorities and institutions (interinstitutional cooperation): national institutions such as the National Anticorruption Center, Customs Service, State Fiscal Service, Agency for the Recovery of Criminal Assets, General Police Inspectorate, National Bank, regulatory authorities; international institutions or judicial authorities from other states through international legal assistance (letters rogatory, joint investigation teams, information exchange, extraditions, etc.).

The legal instruments provided to the prosecutor are not merely theoretical means of intervention but genuine procedural mechanisms designed to enhance the efficiency of criminal prosecution. Their rigorous and responsible use requires not only a profound knowledge of the legal framework but also adequate managerial capacity, coupled with a strategic vision of the administration of criminal justice.

Strengthening prosecutors' capacity to apply these instruments coherently and efficiently is essential to achieving the purpose of the criminal process, which is "to protect the person, society, and the state from crimes, as well as to protect the person and society from the illegal acts of persons in positions of responsibility in their activities related to investigating alleged or committed crimes, so that any person who has committed a crime is punished according to their guilt and no innocent person is held criminally liable and convicted" (Criminal Procedure Code of the Republic of Moldova, 2003, art. 1).

2. The Balance Between Promptness and the Guarantee of Procedural Rights

At the same time, one of the most sensitive aspects of the modern criminal process is maintaining a balance between the promptness of procedures and the respect for the fundamental rights of participants. In an increasingly complex judicial context, public and institutional pressure on the justice system to resolve criminal cases quickly can sometimes lead to a disproportionate emphasis on efficiency, to the detriment of procedural

guarantees. However, in a state governed by the rule of law, efficiency cannot be pursued at any cost but must be harmonized with the requirements of a fair trial, enshrined both at the constitutional level and in international human rights instruments.

According to Article 6 of the European Convention on Human Rights (ECHR, 1950, art. 6), everyone has the right to have their case heard within a reasonable time, but also to a fair trial, which implies, among other things: respect for the adversarial principle; equality of arms between prosecution and defense; the right to effective defense, including through qualified legal assistance; and the guarantee of legality of evidence and procedural acts.

Promptness is a component of a fair trial but cannot be invoked to justify limiting or violating other procedural guarantees.

The prosecutor, as the holder of the criminal prosecution function and the leader of the investigation phase, bears a dual responsibility: on the one hand, to ensure that procedures are conducted within a reasonable time frame, and on the other hand, to respect the procedural rights of the accused, the victim, the injured party, and other participants.

This responsibility requires adopting a balanced approach that avoids both unjustified delays and excessive haste that might compromise the right to defense or the quality of the evidence. For example: imposing unrealistic deadlines for the defense to submit pleadings or evidence may constitute a violation of the adversarial principle; refusing to admit certain decisive evidence under the pretext of shortening the criminal procedure may vitiate the entire process; using simplified procedures without the valid and informed consent of the accused may affect the validity and legality of the decisions adopted.

The case law of the European Court of Human Rights consistently emphasizes the necessity of respecting this balance. In the case of *Salduz v. Turkey* (2008), the Court ruled that the right to defense must be guaranteed from the early stages of the criminal investigation, regardless of the pressure exerted on authorities to act quickly (*Salduz v. Turkey*, 2008).

In other cases, such as *Barberà, Messegue and Jabardo v. Spain* (1988), the ECHR condemned the use of accelerated procedures that deprived the defense of effectiveness, highlighting that promptness cannot justify superficiality in the administration of justice (*Barberà, Messegue and Jabardo v. Spain*, 1988).

Any measure aimed at accelerating the criminal process must cumulatively meet the following essential conditions: legality – the measure must be expressly provided by law and comply with the procedural framework, including procedural principles; proportionality – the application of the measure must not infringe the substance of the

fundamental rights and freedoms of the parties involved; transparency – its implementation must take place under clear, predictable, and accessible conditions for all parties involved; reversibility – the measure must not produce irreversible effects so that, in the event of a procedural error being found, the situation can be remedied without irreparable harm.

These criteria are essential to maintain the balance between promptness and the protection of rights, thus avoiding turning efficiency into an absolute goal.

Conclusions

The obligation of promptness in the criminal investigation phase is not merely an administrative requirement but constitutes an essential guarantee of the right to a fair trial, recognized both by domestic criminal procedural law and international human rights standards. According to Article 6 §1 of the European Convention on Human Rights, everyone has the right “to a trial within a reasonable time,” which also implies the state’s duty to organize criminal proceedings in a manner that ensures their prompt and diligent conduct.

In national law, this obligation is enshrined in Article 20 of the Criminal Procedure Code of the Republic of Moldova, which requires criminal proceedings to be conducted within a reasonable time, proportional to the complexity of the case and the nature of the charges. Thus, promptness is not merely an expression of institutional efficiency but a procedural requirement with constitutional value, aimed at protecting the parties against abuse, undue delay, and prolonged legal uncertainty.

In this context, the prosecutor — as the head of the criminal investigation and guarantor of legality at this stage — plays an active, complex, and strategic role that goes beyond that of a mere state prosecutor. The prosecutor is called not only to ensure the collection of necessary evidence but also to manage resources and procedural actions in a way that balances promptness with respect for all fundamental procedural rights, including the right to defense, the adversarial principle, and equality of arms.

This responsibility cannot be reduced to a mechanical application of the law; it requires legal and managerial discernment whereby the prosecutor effectively uses legal tools (procedural control, simplified procedures, case prioritization, inter-institutional and international cooperation) tailored to each specific procedural situation. Efficiency must not be confused with procedural haste: promptness is not synonymous with superficiality.

An unjustified reduction of the duration of the criminal investigation, to the detriment of rigorous evidence administration or the exercise of the

right to defense, can undermine the entire criminal process, generating significant risks of nullity, exclusion of evidence, and ultimately, condemnation of the state by the European Court of Human Rights for violation of Article 6 ECHR.

Therefore, the simultaneous and balanced application of the principle of promptness along with the requirements of legality and protection of procedural rights is the only way to achieve genuine criminal justice — one that not only punishes crimes but does so fairly, transparently, and in accordance with the fundamental principles of the rule of law. The efficiency of justice cannot be achieved outside the framework of fundamental rights protection without risking its legitimacy.

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SOME CONSIDERATIONS ON THE GUARANTEEING AND DEFENDING HUMAN RIGHTS IN ROMANIA THROUGH FREE ACCESS TO JUSTICE

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Abstract:

The recognition, guarantee and protection of human rights in Romania is a necessary condition for the existence of a fully functioning democracy. The Fundamental Law lists and describes the fundamental rights and freedoms, but the difficulty begins when it comes to knowing the protection systems offered by national and international human rights law. The entire state structure, central and local, is based on the law, where the fundamental rights and freedoms of the citizen, human rights, are put in the foreground. Among the procedural guarantees that strengthen the mechanisms for the protection of human rights is the right to a trial: every person has the right to a fair, public and reasonable hearing by an independent and impartial court, established by law, which will decide either on challenges to his civil rights and obligations or on the merits of any criminal charges against him. This article seeks to discuss the effectiveness of free access to justice in guaranteeing and defending human rights in Romania.

Key-words: *the rule of law, democratic institutions, human rights, free access to justice.*

1. Introductory considerations.

The genesis of human rights, which goes back to the dawn of antiquity: it passes through the Middle Ages, develops through the important contribution of the 17th-18th centuries, so that the years following the Second World War give them a definitive shape. Within human rights, the notions of freedom and dignity are essential, because they appear as “matrix principles”[1] par excellence, which constitute the foundation of fundamental rights, respectively their reason for being. At the international level, respect for human rights is closely monitored by specialized bodies of the United Nations. In this regard, Article 1, paragraph 3 of the Charter of the United Nations establishes that one of the purposes of the United Nations is: “to promote and encourage respect for human rights and fundamental freedoms for all, without distinction as to race, sex, language or religion”. In the same context, human rights in Europe and their respect represent one of the fundamental political standards, expressly formulated by the European Council in Copenhagen (1993), of integration into the Union. More broadly, in its economic relations with developing countries, the European Union practices the so-called conditionality clause. It takes

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into account the respect for human rights by the countries to which the Union grants assistance and development support[2].

Domestically, the main normative act guaranteeing respect for human rights is the Constitution. According to art. 11, par. 2 of the Constitution, treaties ratified by Parliament, according to the law, are part of domestic law. This is also the case of the European Convention on Human Rights, ratified by Romania by Law no. 30 of 18 May 1994, which became an integral part of the Romanian legal system and constitutional and supra-legislative force. Also, in accordance with the provisions of art. 20 of the Constitution, the constitutional provisions regarding the rights and freedoms of citizens are interpreted and applied in accordance with the Universal Declaration of Human Rights, the covenants and other treaties to which Romania is a party, and in case of inconsistency between the covenants and treaties regarding fundamental human rights to which Romania is a party and domestic laws, international regulations have priority, unless the Constitution or domestic laws contain more favorable provisions.

The obligation to interpret and apply constitutional provisions on human rights in accordance with international treaties ratified by Romania is imposed on all Romanian public authorities. The invocation of a possible contradiction between a domestic norm regarding a right protected by the Convention and its provisions on the basis of art. 20, para. (2) of the Constitution can be made before any Romanian public authority called upon to apply the norm in question, including before the courts, based on the principle of free access to justice, the interested party having the choice between the procedure of non-conventionality and that of unconstitutionality. The fundamental law is very clear when it lists and describes fundamental rights and freedoms, most of which are addressed to the Romanian citizen. The difficulty begins when it comes to knowing the protection systems offered by national and international human rights law. Thus, the need arises for the state itself, through its specialized institutions, to ensure the widest possible promotion of human rights[3].

2. Free access to justice and human rights.

The entire structure of the state, central and local, is based on the law, where the fundamental rights and freedoms of the citizen, human rights, are put in the foreground. Also, the whole of the relations between citizens and the state is based on the law. All individuals, regardless of their social position, their role in the hierarchy of society, are subordinated to the provisions of the law, act, more precisely, must act both in political life and in social and private life in accordance with the law, *dura lex, sed lex*[4]. Among the procedural guarantees that strengthen the mechanisms for the protection

of human rights is the right to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law, which will decide either on challenges to his civil rights and obligations or on the merits of any criminal charge against him[5]. In our country, justice – as a public force organized in the state – plays a fundamental role in the defense of human rights, its hierarchical organization, the right to appeal, the presumption of innocence are among the fundamental, structural and action components through which justice aims to defend fundamental rights. In order for rights and freedoms to become effective, they must be defended by a court to which their holder can freely access, which must be established by law, be independent, impartial and judge according to a fair, public procedure and within a reasonable time. This general guarantee of the effectiveness of rights and freedoms is usually called the right to a fair trial or, as stipulated by the Romanian Constitution, through free access to justice[6].

Romania has enshrined, through the Constitution and other normative acts, the fundamental rights and freedoms of man, as civil rights and freedoms. Based on the principle of the supremacy of the Romanian Constitution, justice has become one of the guarantees of the effective exercise of civil rights and freedoms. This role is motivated by the place of the judiciary in the system of public powers and by its functions. Justice is carried out in the name of the law, by judges who are independent and subject only to the law. Reporting judicial activity only to the law ensures precisely the unconditional application of the law and only the law[7]. Thus, art. 21 para. (1) of the Romanian Constitution enshrines free access to justice. By the generality of its formulation, art. 21 allows any person access to justice: Romanian citizen, foreign citizen or stateless person. It also allows access to justice for the defense of any right or freedom and any legitimate interest, regardless of whether they result from the Constitution or other laws. In para. (2) of the same article it is stipulated that no law may restrict the exercise of this right. Moreover, art. 52 para. (1) of the Romanian Constitution is the constitutional basis for the liability of public authorities for damages caused to citizens by violating or disregarding rights and freedoms, which represents the main constitutional foundation of administrative litigation[8]. The constituent legislator took into account not only administrative acts issued by public administration authorities in the sphere of executive power, but also administrative acts issued by other public authorities in the sphere of the other two powers (legislative and judicial) or with control powers, whether or not provided for in the Constitution[9].

In the process of building the rule of law, the promotion and protection of human rights is a fundamental democratic principle, and an important landmark for Romania. As a signatory to the acts and documents adopted at

European and International level for the protection of fundamental human rights, Romania has expressed its will, inter alia, to respect the right to free access to justice – within the meaning of art. 8 of the Universal Declaration of Human Rights, art. 14 of the International Covenant on Civil and Political Rights and art. 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. This implies: the constitutionalization of certain rights and freedoms; their jurisdictionalization, through the existence of legislation and procedures that formulate fundamental rights in normative language, namely free access to an independent judiciary; the organization of a constitutional litigation of fundamental rights and freedoms. This last formal mechanism of the rule of law concretizes the evolution towards a state of substantive law, in which the evolution of power is subordinated to the achievement of individual freedom[10].

Considered an inherent characteristic of a democratic regime, the principle of the rule of law is a key element in the protection of the fundamental rights of individuals against the abuses of the rulers. Being an important part of positive law, this principle also gives individuals access to judicial remedies to challenge the violation of their fundamental rights, protected by both national and supranational legal instruments, when domestic courts fail. The principle of the primacy of law is capitalized on the role of the national judge in interpreting Community law in relation to human rights protection acts, thus limiting the actions of legal subjects[11]. One of the basic principles of the interpretation of the European Convention on Human Rights by the Strasbourg Court is the principle of evolutionary interpretation. The Convention is an instrument whose interpretation has evolved according to the evolution of the societies in which it is applied, and the judges of the Court have always sought to broaden the protection of human rights, even beyond the provisions expressly provided for in the initial text. The role of European judges in consolidating the principle of the rule of law is undeniable[12].

The fundamental rights recognized to individuals by international instruments create the possibility for them to oppose national authorities when they consider that their rights are being violated. Moreover, state authorities have the obligation to guarantee these rights. The principle of the rule of law represents an effective instrument in the protection of human rights, the impact of which is stimulated by the intervention of supranational European jurisdictions, the principle of the pre-eminence of law becoming an undeniable stimulator in the expansion of human rights protection in European states.

3. Scope and characteristics of the principle of free access to justice.

By the generality of its formulation, the constitutional text allows any person access to justice – Romanian citizen, foreigner or stateless person – and aims at the defense of any right or freedom and any legitimate interest, regardless of whether it results from the Constitution or from other laws. However, as has been emphasized in the doctrine[13], the phrase “legitimate interests” does not impose a condition for the admissibility of the legal action, since the legitimate or illegitimate nature of the claims formulated in the legal action results only from the trial of the respective case and will be ascertained by the court decision. It only obliges the justice system to protect only legitimate interests. The fact that the person requesting the trial of his case by a court is guilty of violating certain legally enshrined rights and freedoms cannot be regarded as an impediment to access to justice[14]. The European Court of Human Rights also ruled in this regard in the case of *Lawless v. Ireland* (1961)[15]. On that occasion, it was held that, although the provision of Article 17 of the ECHR concerning the prohibition of abuse of rights has a prohibitive function – in the sense that it does not allow any individual or group to avail themselves of any provision of the Convention to engage in or carry out an activity aimed at violating a right or freedom recognized therein – it cannot deprive an individual of access to justice and a fair trial, as long as he has not invoked the Convention in order to justify or carry out acts contrary to the rights and freedoms recognized therein. Moreover, the particular importance attributed to this right in a democratic society makes the very waiver of it by the beneficiary subject to certain conditions, without which it cannot be considered valid[16].

The guarantee of a fair trial, which also implies access to it, consists of a series of distinct rights, such as those concerning an impartial and independent court, a public trial or a reasonable time for the proceedings. Some of these rights may be waived, while others form the very essence of the notion of a “fair trial”, which does not exist in their absence, such as the requirement of an impartial and independent court[17].

The principle of free access to justice grants every person the right to access the court of law in order to defend his or her rights. Its mere legal enshrinement, even at the highest level, through the constitution, is not likely to ensure its real effectiveness, as long as, in practice, its exercise encounters obstacles. Access to justice must therefore be ensured effectively and efficiently[18]. The need to ensure effective access to justice cannot, however, be considered as an obstacle to the establishment, by law, of conditions for those who wish to submit their case to the courts, such as judicial stamp duties. In this sense, there is also the jurisprudence of the Constitutional Court[19], in which it was stated that justice is a public service

of the state, and its costs are borne by the state budget, to whose revenues all citizens must contribute. In this sense, judicial stamp duties signify what has been called a "tax on justice". The contribution of the litigant by advancing a part of the expenses involved in the public service of justice can, however, be recovered from the party that fails in its claims, being included in the court costs. According to the provisions of our Constitution which guarantee free access to justice, no prohibition is established regarding judicial fees. Access to justice is not an absolute right but must be effective, which implies the possibility for the decision to be enforced, with the coercive force of public authorities, in case of necessity[20].

4. The legal, social and political significance of the principle of free access to justice in a democratic society.

The school of natural law (jusnaturalism) has played an undeniable role since the 17th-18th centuries in the construction of the state. During the same period, the idea supported by jusnaturalists developed according to which the person pre-exists the state, the product of a "social contract", concluded in the interest and for the utility of the two parties: the state and the individual. In this logic, the individual, as a human being, is considered the holder of rights that the state has the obligation to guarantee. This theorization of the state is seen as concrete through the American and French revolutions at the end of the 18th century, which led to the creation of states founded on a Constitution[21] and which, at the same time, valorize individual rights and freedoms through the two consecrated declarations[22]. The subsequent transformations of states involved the shaping of a new vision of human rights in the following centuries. Over the traditional vision of "rights-freedoms" is superimposed the idea of "rights-claims"[23] exigible to states from the individual. The relationship thus constructed produces an interdependence between the two principles: while the state has become the guarantor of human rights, these rights represent an instrument for limiting the power of the state. Thus, the regulations that protect human rights, both at national level (Constitutions) and at international level (ECHR, CFREU), have also become instruments for consolidating the preeminence of law. The jurisdictions that have the competence to control the implementation and compliance with these instruments constantly refer to the principle of the rule of law in their activity. The internationalization of the principles of the rule of law and the protection of human rights occurred in Europe mainly through the Council of Europe and the European Union.

In interpreting the ECHR, the Strasbourg Court is subject to the general rules of treaty interpretation defined in Articles 31-33 of the Vienna

Convention of 23 May 1969[24]. At the same time, the Court has developed a series of its own principles and methods of interpretation through which it has constantly attempted to amplify the protection offered by the ECHR. Among the amplifying concepts developed by the Court, which are the basis of the progressive interpretation[25] of the Convention, are: the rule of law, the autonomy of interpretation of the terms of the Convention, the principle of non-discrimination, positive obligations, the narrow interpretation of restrictions, legitimate expectations and personal autonomy[26].

The legal, social and political significance of the principle of free access to justice appears all the more substantial to us since, in the context of a constitution and international acts that aim at an exhaustive regulation of human rights and freedoms, the effective guarantee of their existence and respect emerges as a primary concern. Indeed, the name of the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) summarizes its very spirit, which aims not at a simple proclamation of rights, but, in particular, at establishing the means to make it possible to respect and defend them[27]. The guarantee of access to justice does not depend on the express regulation of this right in the legislation of a State party to the Convention. Thus, the judgment delivered by the European Court of Human Rights in the case of *Golder v. the United Kingdom of Great Britain and Northern Ireland* (1975)[28] reveals the particular importance that this court attributes to the principle of free access to justice for the very existence of a democratic society. The aforementioned decision also defined the scope of application of Article 6, point 1 of the ECHR, in the sense that it regulates not only the conditions necessary for a fair trial, but also the right to access such a trial for the protection of rights provided for by law[29], underlining the importance of exercising such a right in the context of a democratic society and a state governed by the rule of law.

Art.21 of the Romanian Constitution expressly provides for the right of any person to address the courts for the defense of his or her rights, freedoms and legitimate interests, a right that cannot be restricted in its exercise by any law. Moreover, the direction taken by the constituent legislator, of alignment with European regulations on human rights, was also confirmed on the occasion of the revision and republication of the Constitution, when art.21 was supplemented with the principles enshrined by the ECHR regarding the right to a fair trial and to the resolution of cases within a reasonable time. Also, the special administrative jurisdictions have acquired, by virtue of the last paragraph of art.21, an optional character and are free of charge.

5. Ensuring a constitutional basis for a fair trial.

The firm will affirmed in the 18th century to make the Constitution an instrument for the defense of freedom marked, in the political consciousness of the peoples, the attribution of a higher prestige to written, rigid constitutions, and the power established on the basis of a constitution is necessarily limited. Human rights could not become legal realities except to the extent that the political itself is subject to the law/juridical and is in a perfect balance, which can only be achieved in a state in which political power and individuals are bound by general rules which in turn are the expression of the will of the entire people. The social destination of human rights, however, requires that they correspond to the requirements of public order, to the needs of society, and to the economic ones. Thus, ensuring a constitutional, legislative and procedural basis for the affirmation, promotion and protection of fundamental human rights and freedoms involves profound transformations in the nature of the state itself, but also in the nature of relations between states. The existence of a Constitution, guarantor of fundamental rights and freedoms or, at least, of a Charter or Declaration of Rights is a defining element of the rule of law. Our country has declared its intention to integrate into the international community, based on the idea of guaranteeing, promoting and protecting human rights by aligning national legislation with international standards[30], through democratization and reform of the country's legal institutions.

The interpretation and application of citizens' rights and freedoms are made in accordance with the provisions of international treaties to which Romania is a party. Art. 20 para. (2) of the Constitution provides that: "If there is a discrepancy between the pacts and treaties concerning fundamental human rights, to which Romania is a party, and domestic laws, international regulations shall have priority". As such, courts or other public authorities shall apply, in specific cases, directly the international regulations, which have priority over domestic laws[31]. The national judge must be able to progressively remove, on his own initiative, the application of domestic legislative provisions that constitute an obstacle to the full, direct effectiveness of the norms of the European Convention on Human Rights. The Constitutional Court has had the opportunity to rule on several occasions on the legitimacy of the provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms in the entirety of the human rights regulations applicable in our country, as well as on the importance and binding nature of this international instrument[32].

Article 47 of the Charter of Fundamental Rights of the European Union states that: "Everyone has the right to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously

established by law”. The Court of Justice established this right as a general principle of EU law in its judgment of 15 May 1986 (Case 222/84 Johnston, Case 222/86 Heylens). This means that the right of access to a court applies whenever rights and freedoms guaranteed by EU law are at stake. EU Member States are obliged to provide remedies and procedures to ensure that rights are respected in accordance with EU law. National legislation must not infringe the provisions relating to the effective legal protection of these rights[33].

Among the rights clearly associated with the rule of law are those that provide judicial guarantees such as: the right of access to justice, the right to a judge competent under the law, the right to be heard, the right of non bis in idem, the non-retroactivity of adverse legal measures, the right to an effective remedy, the presumption of innocence, and the right to a fair trial in general[34]. This principle also imposes clear requirements on the exercise of legal services with regard to legality (provided for by law) and capacity (in fact)[35]. Consequently, the rights protected by the Convention involve a control by the European Court of the legality and proportionality of the measures taken by the national authorities. Thus, in applying Articles 5, 7, 8, 9, 10 and 11, the Court will ensure that the national authorities comply with the law, guaranteeing the predictability of the law and legal certainty in accordance with the rule of law[36]. At the same time, in applying Article 18 of the Convention, the European judge will be able to go further, checking beyond domestic legality, the factual reasons which led the authorities to apply certain restrictions. As for the Court of Luxembourg, starting with the judgment of *Verzii v. Parliament*, it refers to the rule of law, considering the Community a “community of law” within which neither the Member States nor the institutions can avoid checking the conformity of their acts with the founding treaties[37].

The special guarantees of the right to a fair trial, within the meaning of the European Convention on Human Rights, oblige states to exercise their right to regulate laws in compliance with these guarantees. Free access to justice does not, however, exclude the existence of prior administrative procedures, if the administrative jurisdictional bodies either themselves meet the requirements of art. 6, paragraph 1 of the ECHR, or they are subject to subsequent control by a judicial body with full jurisdiction, if they do not comply with these requirements. In this regard, the Constitutional Court of Romania has decided that the establishment of an administrative-jurisdictional procedure is not contrary to the principle provided for in art. 21 of the Constitution regarding free access to justice, as long as the decision of the administrative jurisdictional body can be appealed before a court. The administrative-jurisdictional procedure constitutes a protective

measure that cannot have as its purpose the limitation of access to justice. The existence of administrative jurisdictional bodies cannot lead to the elimination of the intervention of the courts, under the conditions established by law. This consequence also results from the requirements of the principle of separation of powers in the state, which, as regards the relationship between the public administration and the judicial authority, excludes the possibility that a public administration body, even of a jurisdictional nature, can substitute itself for the judicial authority. As a result, the decision of the administrative jurisdictional body is subject to judicial review, of the administrative litigation court or of another competent court according to the law, and the parties cannot be limited in the exercise of this right enshrined in the provisions of the Constitution[38].

6. Access to justice, as an inherent aspect of the right to a fair trial.

Access to justice, as an inherent aspect of the right to a fair trial, cannot be conceived in the absence of the guarantees imposed by Article 6, paragraph 1 of the ECHR, guarantees which can only be waived to the extent indicated above[39]. This right does not only require that the court be accessible, but also impartial and independent in its judgment, established by law and competent to resolve the merits of the case. Thus, the independence of the court concerns two aspects: its independence from other state authorities and its independence, or impartiality, from the parties to the case. The independence of the judge from other state authorities – the executive in particular – depends on the manner of appointment and the duration of the mandate, the existence of protection against external pressures and the existence of an appearance of independence. It should be emphasized that one of the important factors in assessing the independence of the court is that of appearance[40]. Thus, in its view, the European Court of Human Rights considered it necessary not only for justice to be done in fact, but also for all the appearances to exist from which it can be seen that the conditions provided by law have been met in order for the trial to be conducted fairly[41]. The issue of the independence of courts also made it necessary to resolve the issue of the existence of administrative-jurisdictional bodies. In this regard, the Constitutional Court affirmed the preeminence of free access to justice in relation to the existence of administrative-jurisdictional procedures[42], ruling that the existence of procedures before administrative bodies with jurisdictional powers cannot be regarded as an obstacle to access to justice as long as their decisions are subject to judicial review by the administrative court or another competent court among those provided for in Article 125 of the Constitution.

According to these constitutional provisions, "Justice is administered by the Supreme Court of Justice and by the other courts provided for by law"[43].

However, if a complaint against an administrative act is addressed, according to the law, to an administrative body, there is no violation of Article 6(1), provided, however, that, in a final stage, there is the possibility of submitting the case to a court that meets the above-mentioned conditions of the Convention. Thus, the Strasbourg Court ruled that access to justice is considered to be achieved only if the appeal to the court is made in the final stage of the action. This hypothesis was considered to be applicable only to those cases in which, according to national regulations, the procedures are not civil or criminal in nature, but disciplinary or administrative and, moreover, the decision does not come from what, according to national law, are considered to be "courts in the classical sense". If, however, the action is liable to be classified as civil or criminal, both by virtue of the Convention and of the domestic law of a State and the body deciding on it is qualified as a "court", then this body must meet the requirements of Article 6, paragraph 1, regardless of whether or not the decision is subject to attack[44].

The current provisions of the Constitution, as they appear following the revision of the fundamental law, provide that special administrative jurisdictions are optional and free of charge, and the Constitutional Court has ruled that "the interpretation of the optional nature of these procedures must be in the sense that the entitled party may address either the administrative-jurisdictional body or directly the court. However, once the administrative-jurisdictional path has been chosen, it must be followed to the end, after which, under the conditions of the law, the party may address the court on the basis of the right of access to justice provided for in Article 21 of the Constitution"[45].

The same arguments are also found in the judgment rendered in the case of *Vasilescu v. Romania* (1998)[46], where the European Court of Human Rights analyzed the status of the prosecutor and concluded that it does not meet the requirements to be considered a court within the meaning of Article 6, paragraph 1 of the Convention, because the conditions of independence provided for therein are not met. The court must prove its independence not only from the other authorities of the state, but also from the parties to the trial. It must, consequently, be impartial. This aspect is assessed, in fact, by referring to the subjective attitude of the judge towards the parties and observing the circumstances whether in the case there are reasons to favor one of the parties. These requirements were also retained in the case of *Piersack v. Belgium* (1982)[47], where the Strasbourg Court emphasized the need to ensure an impartial court in a democratic society.

Also, the requirements of Article 6, paragraph 1 refer to the regulation by law of the existence, jurisdiction and procedure of courts. The same provisions of the Convention require that the court have the jurisdiction to “decide”, to give a solution in the cases submitted to it for resolution, whether in criminal or civil matters. In other words, the court must be able to assess all the elements, in fact or in law, which lead to the solution of the dispute. Thus, in the case of *Sporrong v. Sweden* (1982)[48], the European Court of Human Rights ruled that, given the powers of the Supreme Administrative Court, which could only exercise, at that time, a limited control over the administrative measures that allowed the expropriation, not being competent to decide on the merits of the case, this court could not be considered a court within the meaning of Article 6, paragraph 1.

Free access to justice does not imply access to all the remedies and courts provided for in the Constitution[49]. Article 6 of the Convention does not itself expressly provide for the right to double jurisdiction in criminal matters, a right to which Article 2 of Protocol No. 7 to the Convention refers, however, the action under appeal is part of the process of resolving the case and must consequently comply with the minimum standard set by the above-mentioned international regulation.

7. Conclusions.

From what has been presented in the study, it follows that in recent years, the institution of human rights has become a major source of dynamism for the historical and democratic evolution of Romanian society, being, at the same time, a source of awareness regarding the affirmation of the personality of individuals and of society as a whole. The constitutional principle of free access to justice was and remains, in practice, the first constitutional argument that those who wish to protect their legitimate rights and interests will invoke in support of it. The primacy of law, together with the protection of human rights, are two of the principles on which democratic society is founded, being at the same time values common to European states, protected by the European Union and the Council of Europe. Among the rights clearly associated with the rule of law are especially those that offer jurisdictional guarantees such as: the right of access to justice, the right to a judge competent under the law, the right to be heard, the right to non bis in idem, the non-retroactivity of adverse legal measures, the right to an effective remedy, the presumption of innocence, as well as the right to a fair trial overall.

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[30]. Art. 11 of the Constitution provides that: para. (1) “The Romanian State undertakes to fulfill exactly and in good faith the obligations incumbent upon it from the treaties to which it is a party”; para. (2) “Treaties ratified by Parliament, according to the law, are part of domestic law”. In its jurisprudence, the Constitutional Court of Romania has held, in several cases, the inconsistency of certain legal provisions from domestic legislation with certain international regulations or the lack of regulation by domestic laws of certain social relations that are regulated by international acts. Up to now, the Court has held that certain legal texts are

unconstitutional only in cases where they, in addition to being inconsistent with international regulations, also contravene certain express provisions of the Constitution, apud I. Muraru, N. M. Vlădoiu, A. Muraru, S.G. Barbu, *Contencios constituțional*, Editura Hamangiu, București, 2009, p. 156-157. Cf. M. Constantinescu, A. Iorgovan, I. Muraru, E. S. Tănăsescu, *Constituția României revizuită. Comentarii și explicații*, Editura All Beck, București 2004, p. 30-31.

[31] To be seen: I. Muraru, N. M. Vlădoiu, A. Muraru, S.G. Barbu, *op. cit.*, p. 158.

[32]. *Jurisprudența Curții Constituționale și Convenția Europeană a Drepturilor Omului 1994-2003*, Editura Regia Autonomă Monitorul Oficial, București, 2005, p. 9-10.

[33]. CJUE, C-279/09, *cauza DEB Deutsche Energiehandels- und Beratungsgesellschaft mbH/ Bundesrepublik Deutschland*, 22 decembrie 2010, alineatul 59.

[34]. Venice Commission, CDL-AD(2011)003rev, p. 13.

[35]. *Ibidem*,

[36] For all these articles see, among many other decisions of the European Court of Human Rights: *Ismoilov c. Rusia*, din 24 aprilie 2008, §137; *Assanidze c. Georgia*, din 8 aprilie 2004, § 171; *Winterwerp c. Olanda*, din 24 octombrie 1979, §§39 și 45; *Merabashvili c. Georgia*, din 28 noiembrie 2017, §186; *C.R. c. Regatul Unit*, din 22 noiembrie 1995, §34; *Streletz și alții c. Germania*, din 22 martie 2001.

[37] Court of Justice of the European Communities, Judgment of 23 April 1986 in the case *Les Verts c. Parlement*, C-294/83, ECLI:EU:C:1986:166, pct. 23.

[38]. *Decizia Plenului Curții Constituționale nr. 1/8.02.1994 privind liberul acces la justiție al persoanelor în apărarea drepturilor, libertăților și intereselor lor legitime*, publicată în Monitorul Oficial al României nr. 69/16.03.1994.

[39]. Louis-Edmond Pettiti, Emmanuel Décaux, Pierre-Henri Imbert, *op. cit.*, p.259.

[40]. *Ibidem*, p. 260.

[41]. Vincent Berger, *op. cit.*, p.180.

[42]. *Decizia Plenului Curții Constituționale nr.1 din 8 februarie 1994*, publicată în Monitorul Oficial al României, Partea I, nr.69 din 16 martie 1994.

[43]. Following the revision and republication of the Constitution, the provisions of art. 125 were modified and supplemented, also receiving a new numbering. Thus, currently, they are found in the content of art. 126.

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[45]. *Decizia nr.411 din 4 noiembrie 2003*, publicată în Monitorul Oficial al României, Partea I, nr.925 din 23 decembrie 2003.

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[47]. Vincent Berger, *op. cit.*, 1997, p.171.

[48]. *Ibidem*, p.481.

[49]. Constitutional Court of Romania, *Decizia nr.66 din 14 aprilie 1997*, publicată în Monitorul Oficial, Partea I, nr.377 din 24 decembrie 1997.

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EUROPEAN ARREST WARRANT AND FUNDAMENTAL RIGHTS: THE IMPACT OF RECENT LEGISLATIVE REFORM

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Abstract:

The European Arrest Warrant is one of the most important instruments of judicial cooperation in criminal matters within the European Union, based on the principles of mutual recognition and mutual trust between Member States. However, its uniform application has generated significant tensions in practice between judicial efficiency and the need to guarantee the fundamental rights of the persons concerned, in particular in the case of detention conditions, the right to a fair trial and the principle of proportionality. Thus, the paper analyzes the new legislative and jurisprudential trends, their impact on the application of the European Arrest Warrant and proposes directions for an interpretation in accordance with the standards of the European Court of Human Rights and the Charter of Fundamental Rights of the European Union.

Keywords: *European Arrest Warrant, Legislative Reform, Proportionality, Human Rights Protection, European Judicial Cooperation, Detention Conditions*

1. Preliminary aspects

This mechanism is based on the principle of mutual recognition of judicial decisions and judgments, which is the cornerstone of judicial cooperation in criminal matters within the European Union. The mandate is operational in all Member States of the Union.

European arrest warrant involves direct cooperation between the competent judicial authorities of the states involved, without the intervention of central administrative authorities, which contributes to making the procedure more efficient and reducing the duration of surrender.

In applying this instrument, the judicial authorities are obliged to ensure respect for the fundamental procedural rights of the requested person, in accordance with the standards established by Union law and the national law of the executing State. These rights include, inter alia, the right to information on the content of the warrant, the right to be assisted by a lawyer and an interpreter, and the right to legal aid, under the conditions laid down by the law of the State in which the person was arrested.

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2. The legal framework of the EAW

2.1. The evolution of Framework Decision 2002/584/JHA on the European arrest warrant

The European Arrest Warrant (EAW) , regulated by *Framework Decision 2002/584/JHA* , adopted on 13 June 2002, marked a key stage in the consolidation of the European Union's Area of Freedom, Security and Justice. The geopolitical context following 11 September 2001 accelerated the adoption of this instrument, which was intended to replace traditional extradition procedures with a system of mutual recognition of judicial decisions between Member States. The EAW allows judicial authorities to request the arrest and surrender of a person from another Member State, either for the purpose of criminal prosecution or for the purpose of executing a custodial sentence.

In 2009, *Framework Decision 2009/299/JHA* amended the original framework by introducing Article 4a , which allows for the refusal of the execution of the EAW in cases of conviction in absentia, if no guarantees are offered regarding the possibility of a retrial. At the same time, surrender procedures and the protection of the rights of the requested person were strengthened.

The European Parliament resolution of 20 January 2021 highlighted the need for significant improvements to the European Arrest Warrant (EAW) system, proposing, among other things, the introduction of a clear ground for refusal in situations where there is a risk that the requesting State would not respect the fundamental values set out in Article 6 of the Treaty on European Union and in the Charter of Fundamental Rights, the revision of the list of offences exempted from double criminality to respect the principle of proportionality, the establishment of common standards on the protection of human rights and the independence of judicial systems, as well as a legislative revision of Framework Decision 2002/584/JHA for clearer and harmonised application at EU level.

In 2023–2024, the Council of the EU published practical guides and mutual evaluations reflecting the case law of the CJEU and the need to strengthen mutual trust. *The Commission report COM(2020)270* identified persistent shortcomings in the application of the EAW, such as procedural constraints, inadequate detention conditions and missed deadlines, supporting the idea of a legislative review.

In December 2022, the European Commission issued a recommendation aimed at strengthening the protection of fundamental rights in the framework of the procedures regulated by the European Arrest Warrant (EAW), proposing the introduction of minimum standards on detention conditions, additional procedural guarantees and clarification of

the grounds that may justify the refusal to execute the EAW in situations involving the risk of inhuman treatment; these measures are part of an already existing European legal framework, consolidated by Directives 2010/64/EU (interpretation and translation), 2012/13/EU (information in criminal proceedings), 2013/48/EU (access to a lawyer and communication with third parties) and 2016/1919/EU (free legal aid for persons subject to EAW), thus contributing to the uniformity of judicial practices and the strengthening of procedural guarantees in all Member States.

Although there is no official consolidated version reflecting a major legislative reform of Framework Decision 2002/584/JHA, its application is deeply influenced by secondary law and the case law of the CJEU¹. The EAW has evolved from an efficiency-oriented instrument to a balanced one, in which the efficiency of judicial cooperation is combined with respect for fundamental rights.

The CJEU ruling of *May 18, 2021* on the Romanian Judges Forum Association highlighted conflicts between national legislation and European standards, especially regarding interim appointments and specialized sections that may affect judicial independence.

In *Poland*, judicial reforms have generated major tensions, with the CJEU intervening to block legislative changes, impose protection standards and suspend political control mechanisms over the judiciary. *Hungary* has faced similar interventions, with the CJEU acting to limit political interference and ensure compliance with European rules in extradition procedures.

In *Romania*, through the Cooperation and Verification Mechanism, the Court emphasized the need to align national legislation with EU requirements, by eliminating factors that may affect the perception of judicial independence, introducing procedural guarantees and making appointments more transparent.

The recent case law of the Court of Justice of the European Union (CJEU) highlights a firm direction of strengthening the protection of fundamental rights in the application of the European Arrest Warrant (EAW), through an increasingly refined approach that involves the individual assessment of the risks associated with each case, restricting the automatic application of the EAW, rigorous verification of detention conditions in the requesting state and reinterpreting the principle of mutual trust in a contextual way, allowing the refusal to execute the warrant in exceptional situations that threaten human dignity and judicial independence.

¹ CJEU, ML, case C-220/18 PPU, ECLI :EU:C:2018:586 .

3. Analysis of relevant case law (CJEU, ECHR).

Recent case law of the Court of Justice of the European Union (CJEU) and the European Court of Human Rights (ECHR) has redefined the limits of the application of the European Arrest Warrant (EAW), emphasizing the respect for fundamental rights in the framework of judicial cooperation between EU Member States.

3.1. Case law of the Court of Justice of the European Union

Following the adoption of the European Arrest Warrant reform, the Court of Justice of the European Union (CJEU) has continued to clarify the application and limits of this mechanism, underlining the importance of striking a balance between the efficiency of the procedures and the protection of fundamental rights. Recent decisions have reinforced the interpretation that the requesting State must ensure detention conditions that comply with European standards and respect the principle of a fair trial¹. In the ML case (C-220/18 PPU), the CJEU reaffirmed that the execution of an EAW may be refused if there is a real risk that the person will be subjected to inhuman or degrading treatment in the requesting State².

Post-reform jurisprudence creates³ a more rigorous standard for assessing detention conditions and national procedures, marking a dynamic approach to fundamental rights in the context of European judicial cooperation.

C-399/11 – Melloni (2013)

The Melloni judgment clarified the relationship between national and European standards of fundamental rights protection in the context of the execution of a European arrest warrant (EAW). The Court of Justice of the European Union⁴(CJEU) ruled that **Member States cannot impose higher national standards** than those laid down in EU law when they affect the uniform application of European law. In this case, Spain wanted to make Melloni's surrender to Italy conditional on the possibility of a new trial, invoking the national right to a fair trial. The CJEU ruled that, if the person was informed of the trial and represented by a lawyer, **there was no need to review the conviction in absentia**, under Article 4a of the Framework Decision on EAW.

C-404/15 PPU and C-659/15 PPU – Aranyosi and Căldăraru (2016)

¹ Minister for Justice and Equality v LM, case C-216/18 PPU, ECLI:EU:C:2018:586

² ML, case C-220/18 PPU, ECLI:EU:C:2018:586

³ IZ and Others, Case C-420/22, decision of 2023 (not published in full, accessible via the Court's database).

⁴ CJEU, Judgment of 26 February 2013, Stefano Melloni, C-399/11, ECLI:EU:C:2013:107

In the Aranyosi and Căldăraru cases, the CJEU¹ examined the surrender of two citizens arrested in Germany on the basis of EAWs issued by Hungary and Romania, expressing concerns about the conditions of detention in the two states. The Court ruled that the executing judicial authorities are obliged to assess individually the risk of a breach of fundamental rights, in accordance with Article 4 of the EU Charter and Article 3 of the ECHR. If the risk is confirmed, the surrender must be suspended until appropriate guarantees have been obtained from the issuing state. This judgment marked an important step in the application of the principle of mutual trust, introducing a legal filter² that imposes on national courts the responsibility to analyse the specific circumstances, including the vulnerability of the person and systemic deficiencies, thus avoiding the automatic application of the EAW.

C-216/18 PPU – LM

The LM case³ examined the impact of systemic deficiencies in the Polish judiciary on the right to a fair trial in the context of the execution of an EAW. The Court introduced a two-stage assessment: the existence of general deficiencies affecting judicial independence and the concrete risk to the person concerned. If this risk is confirmed, surrender may be refused. This approach transforms the principle of mutual trust into a relative presumption, giving the executing court an active role in protecting fundamental rights. LM extends⁴ the logic of Aranyosi and Căldăraru, from physical conditions of detention to procedural guarantees. In contrast, the Melloni case reaffirms the supremacy of EU law, and the OG and PI emphasise that only independent judicial authorities can validly issue EAWs.

C-508/18 and C-82/19 – OG and PI

In this judgment⁵, the CJEU examined whether **German public prosecutors' offices** could be considered an "issuing judicial authority" within the meaning of the EAW. The Court concluded that, due to **their subordination to the Ministry of Justice**, public prosecutors' offices do not provide **sufficient guarantees of independence** to issue EAWs. In contrast, the Prosecutor General of Lithuania was considered sufficiently independent. This decision had a significant impact on the validity of EAWs

¹ CJEU, Judgment of 5 April 2016, Aranyosi and Căldăraru, C-404/15 PPU and C-659/15 PPU, ECLI:EU:C:2016:198

² Eurojust, Report on difficulties in the application of the EAW – official summary

³ CJEU, Judgment of 25 July 2018, LM, C-216/18 PPU, ECLI:EU:C:2018:586.

⁴ EU Justice and Home Affairs Law, Oxford University Press, 2021, chapter on the European Arrest Warrant.

⁵ CJEU, Judgment of 27 May 2019, OG and PI, C-508/18 and C-82/19, ECLI:EU:C:2019:456.

issued by **non-judicial authorities** . Prosecutors' offices can only issue EAWs if they are independent of the executive, strengthening the requirements regarding the issuing judicial authority.

3.2. The case law of the European Court of Human Rights

Bivolaru v. France (2021)

The European Court of Human Rights (ECHR) found a **violation of Article 3** of the Convention in the case of ¹the extradition of Gregorian Bivolaru to Romania. Although he was recognized as **a refugee in Sweden** , France executed the EAW without assessing the real risk of **inadequate detention conditions** . The ECtHR stressed that national authorities must **individually verify the risks** and not rely exclusively on the presumption of equivalent protection offered by the EU. Thus, the ECHR sanctioned France for the lack of a sufficient analysis of the risk of inhuman treatment in Romania. The obligation of the executing state to individually assess the risks related to art. 3 ECHR is strengthened.

Pirozzi v. Belgium (2018)

In this case ², the ECHR validated the surrender of Vittorio Pirozzi to Italy, even though he had been convicted in absentia. The Court considered that the Belgian procedure for executing the EAW **was not deficient**. and that the Italian trial did not constitute a **flagrant denial of the right to a fair trial** . Thus, the presumption of equivalent protection was maintained, and the surrender was considered to be in accordance with the Convention. The ECtHR found a violation of Art. 6 ECHR in the context in which the surrendered person did not have effective access to a lawyer, affecting the right to a fair trial.

The case law of the European Courts has refined the practical application of the EAW, introducing important exceptions to automatic recognition, in particular in cases involving violations of fundamental rights. These decisions provide national courts with clear legal tools to assess individual risks, thus strengthening the protection of persons involved in surrender procedures.

4. Objectives of the European Arrest Warrant reform

The recent legislative reform, promoted by the European Commission in December 2022, aimed mainly at strengthening the guarantees ³for the

¹ ECHR, Bivolaru v. France, application no. 40324/16, judgment of 25 March 2021

² ECHR, Pirozzi v. Belgium, application no. 21055/11, judgment of 17 April 2018.

³See European Commission, **Report on the implementation of Framework Decision 2002/584** (COM(2020) 270 final

person targeted by the EAW and creating a more efficient, fair and respectful legal framework for human dignity. Among the major objectives were the introduction of minimum standards on detention conditions, the extension of procedural guarantees, as well as the clarification of the grounds for refusal to execute the EAW, including the risk of inhuman treatment, the minority of the requested person, convictions in absentia or life imprisonment. In addition, the reform aims to eliminate political interference in the decision-making process and speed up surrender procedures, by establishing clear deadlines and encouraging the execution of sentences in the individual's state of residence ¹.

The judgments of the Court of Justice of the European Union in cases such as *Aranyosi and Căldăraru* (C-404/15, C-659/15 PPU) and *LM* (C-216/18 PPU) have had a major impact on the application of the EAW, establishing the idea that surrender may be refused when there is a real risk of inhuman treatment or unfair trials. This case-law has led to legislative adaptations in several Member States and has reinforced the idea that the individualised analysis of each case must prevail over the automatic application of the instrument.

In parallel, the European Union has adopted a series of directives imposing uniform procedural standards, such as the right to interpretation and translation, to information, to access to a lawyer and to free legal assistance. These legal instruments complement the framework of the EAW and guarantee a minimum level of protection for the person concerned. Directive (EU) 2016/800 also establishes special safeguards for the protection of minors involved in criminal proceedings, obliging judicial authorities to analyse the compatibility of surrender with the best interests of the child.

The proposed reform also includes the digitalisation of the exchange of information between judicial authorities, by strengthening electronic communication systems and standardising the forms used. Another essential pillar is the introduction ²of the principle of proportionality, as a tool for filtering the cases in which the EAW is issued, avoiding its disproportionate use for minor offences. In this regard, the European Parliament, by its resolution of 20 January 2021 ³, called for the review of the issuing criteria, the introduction of minimum thresholds and the assessment of other alternative measures, such as judicial control or electronic surveillance.

¹Eurojust, Digitalization of judicial cooperation in criminal matters – Mandate for further action , 2022

²See European Parliamentary Research Service (EPRS), European Arrest Warrant: legal and practical implementation challenges , 2020, p. 12–15

³European Parliament, **Resolution of 20 January 2021** on the implementation of the European Arrest Warrant (2019/2207(INI)).

4.1. The impact of the EAW reform in Romania and other member states

The implementation of the EAW reform has generated tensions between national legislation and the new European standards, especially in the assessment of detention conditions and the independence of the judiciary. In states where national standards are perceived as insufficient or where there is no clear mechanism for verifying risks related to fundamental rights, judicial authorities may face difficulties in complying with the obligations imposed by the CJEU ¹.

In Romania, the reform of the European arrest warrant has stimulated important debates on the protection of fundamental rights and detention conditions. The adoption of more demanding European provisions has generated pressure to improve the prison infrastructure and to strengthen procedural guarantees in criminal proceedings ². In addition, the need to strengthen cooperation between Romanian judicial authorities and their EU counterparts has increased, in particular by digitalizing information exchanges, which contributes to increasing procedural transparency and efficiency.

In other Member States, the impact of the reform varies: Germany and the Netherlands see it as a natural strengthening of fundamental rights ³, while states with human rights deficiencies have faced challenges and had to revise their legislation. Thus, the EAW reform transforms European judicial cooperation, imposing increased responsibility on states regarding the protection of fundamental rights.

Table 1- Comparative table: Application of the EAW in Romania vs. other EU states

Member State	Practice regarding detention conditions	Application of proportionality criterion	Protection of minors	Procedural guarantees
Romania	Formal evaluation, but with gaps in infrastructure	Rarely invoked, especially in minor cases	Directive 2016/800 transposed, variable application	EU directives implemented, uneven application
Germany	Rigorous evaluation, frequent rejections	Consistently applied, with solid case law	Extended protection, consolidated judicial practice	Complete and consistent implementation

¹ CJEU, Minister for Justice and Equality v LM , case C-216/18 PPU, ECLI:EU:C:2018:586

² CJEU, IZ and Others, Case C-420/22, decision of 2023 (not published in full, accessible via the Court's database).

³ Eurojust, Challenges in the implementation of the European Arrest Warrant post-reform , Annual Report 2023

Member State	Practice regarding detention conditions	Application of proportionality criterion	Protection of minors	Procedural guarantees
France	Punctual evaluation, but with confidence in the system	Limited but growing application	Good protection, but with regional variations	Full implementation, with professional training
Poland	Criticism of detention conditions	Limited application, isolated cases	Formal transposition, weak implementation	Problems with access to a lawyer and translation
Netherlands	High standard, reasoned refusals	Active enforcement, including in tax cases	Extended protection, including in detention centers	Procedural guarantees rigorously respected

Table 2- Comparative table: Practice of Romanian courts vs. other EU states

Analyzed item	Romania	Germany	France	Netherlands
Deferred delivery	Frequently used (e.g. internal causes, health condition)	Strictly enforced, with clear deadlines	Applicable in family cases	Rarely used, prefers quick delivery
Recognition of foreign criminal judgments	Applicable by Law 302/2004	Used in parallel with MEA	Accepted, but with strict conditions	Consolidated practice
Protection of fundamental rights	Formal but growing assessment	Rigorous evaluation, reasoned refusals	Punctual evaluation, with case law	High standard, reasoned refusals
Double procedure (EAW + recognition)	Considered incompatible	Avoided through judicial coordination	Accepted only in special cases	Avoided by legislative clarification

5. Challenges and prospects

5.1 Risks associated with the post-reform European Arrest Warrant

Despite the objectives of the recent reform to streamline and protect fundamental rights, its implementation continues to generate certain notable risks.

One of the main risks is the possibility of abuse in the use of EAW, manifested by its issuance for purposes that go beyond the legal framework and the legitimate objective of surrender for criminal prosecution or

execution of a sentence. Such abuses may include the use of EAW for political purposes, or in situations where the persons concerned risk treatment contrary to fundamental rights, such as detention in inhuman conditions or judicial proceedings lacking fundamental guarantees¹. There may also be situations where the issuing authorities fail to provide sufficient guarantees regarding the respect of procedural rights, which endangers the principle of procedural fairness.

Secondly, there is a marked unevenness in the application of the EAW between Member States, caused both by differences in national legislation and by variations in the institutional capacity and quality of the judicial system. This unevenness leads to difficulties in the execution of warrants, as some States invoke systemic problems, such as poor prison conditions or lack of judicial independence, as reasons for refusing surrender². Such systemically motivated refusals not only slow down procedures but also undermine mutual trust and solidarity between Member States. Last but not least, the legal risk derives from the normative ambiguities that may generate divergent interpretations of the European framework, especially as regards the circumstances in which the EAW may be refused for the protection of fundamental rights or for procedural reasons. The lack of detailed common standards in this regard may lead to inconsistencies and jurisdictional conflicts, affecting the legal certainty of the persons concerned and the efficiency of judicial cooperation.

5.2. Proposed solutions to mitigate risks

To address these risks, a first essential step is to deepen harmonisation at European level. Harmonisation should cover not only the criteria for issuing and executing EAWs, but also minimum standards on detention conditions, procedural guarantees and the rights of the persons concerned . By setting ³clear binding benchmarks , Member States will be able to reduce disparities in application and ensure fair treatment for all EU citizens.

In parallel, robust control and monitoring mechanisms need to be put in place. These could include regular inspections of detention conditions by specialised European bodies, such as the European Committee for the Prevention of Torture and Eurojust, which can provide transparent reports and concrete recommendations to remedy deficiencies ⁴. It is also useful to

¹ Eurojust, Challenges in the implementation of the European Arrest Warrant post-reform , Annual Report 2023

² European Commission, Country Report on the Rule of Law – Romania , COM(2023) 123 final

³ European Commission, Proposal for strengthening the European Arrest Warrant , 2022

⁴ European Parliament, Report on improving detention conditions and judicial independence, 2023

create a clear and accessible legal mechanism allowing the persons concerned to request a review of surrender decisions in the event of a violation of fundamental rights.

Another pillar of the solutions is training and continuous cooperation between national judicial authorities. Standardising practices and strengthening dialogue through European networks helps to prevent misunderstandings and to quickly resolve problems arising in the execution of EAWs.

The European institutions play a fundamental role in supporting and coordinating the effective and coherent implementation of the European Arrest Warrant. The European Commission, as guardian of the Treaties, constantly monitors how Member States transpose and apply the reformed provisions of the EAW, intervening when it identifies non-compliance by initiating infringement procedures¹.

The Court of Justice of the European Union provides binding interpretations of European law, ensuring a uniform level of application and protection of fundamental rights within the EAEU. Its rulings are essential benchmarks in avoiding abuses and clarifying complex cases, thus strengthening mutual trust between Member States².

Institutions such as Eurojust and the European Judicial Network facilitate operational cooperation between judicial authorities, supporting the exchange of information, the rapid resolution of bottlenecks and the coordination of cross-border investigations. This inter-institutional collaboration is essential for the smooth functioning of the EAW and for preventing abuses or unjustified delays³.

Conclusions

The reform of the European Arrest Warrant (EAW) marks an important step forward in European judicial cooperation, by strengthening the protection of fundamental rights and introducing additional safeguards. However, its success depends on uniform application across Member States and is limited by challenges such as detention conditions and lack of judicial independence. The new approach⁴ requires respect for the rights of the data subject and empowers national authorities, who become true guardians of human rights.

In conclusion, the efficiency of the EAW in the context of the recent reform requires an integrated approach, based on legislative harmonization,

¹ European Commission, Infringement procedures and monitoring in the field of justice, 2024

² CJEU, Ministry for Justice and Equality v LM, case C-216/18 PPU, 2018

³ European Judicial Network, Annual report on judicial cooperation, 2023

⁴ Carrera, S. et al., The European Arrest Warrant: Implications for Fundamental Rights and the Rule of Law, CEPS, 2023

rigorous control mechanisms and interstate cooperation, under the supervision of European institutions.

In conclusion, the success of the European arrest warrant in the context of the recent reform depends on a synergy between regulatory harmonisation, the implementation of rigorous control mechanisms and the strengthening of interstate cooperation, all under the supervision and support of the European institutions. Only through this integrated approach can the efficiency of the procedure and the real protection of fundamental rights within the European area of justice be guaranteed.

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CRIMINOGENIC FACTORS OF COMPUTER FRAUD - CONCEPTUAL APPROACHES AND CHARACTERIZATION

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Summary

In this study the authors approach the causality of information fraud through the prism of capitalizing on the explanatory function of criminological science, identifying exogenous criminogenic factors and specific endogenous factors. Lack of a special preventive strategy, lack of digital education, social engineering not adapted to the digital environment, administrative vulnerabilities and law enforcement mechanisms, technical vulnerabilities and uncontrolled development of artificial intelligence, social isolation, anonymity and physical distance, psychological pressures, etc., are specific criminogenic factors which interact to generate and facilitate the perpetration of computer fraud. Globalization and the cross-border nature of cybercrime amplify the interaction between these factors, creating environments conducive to the manifestation and amplification of cyber fraud. In this context, the factors that determine the latency of cyber fraud have also been identified, which makes it impossible to apply measures to deter such criminal conduct. Prospectively, by taking into account the findings, conclusions and scientific results promoted in this study, the prevention of computer fraud will be made more effective by applying preventive measures on specific criminogenic factors.

Keywords: *criminality, causality, exogenous criminogenic factors, endogenous criminogenic factors, cybercrime, cyber fraud, prevention, etc.*

Introduction.

The rapid development of information technologies and the widespread access to and use of the digital environment have brought about a qualitative and quantitative metamorphosis in crime. Naturally, the transition from an industrial society to a digitized one has affected all areas of human activity: economic, social, cultural, scientific, etc. In the new context of digitization, criminals have adapted rapidly to these changes, penetrating the new environment by exploiting information technologies and digitizing many economic processes to acquire undue advantage.

Today, we are witnessing a profound social transformation touching all aspects of human coexistence: from the political and economic to the cultural and spiritual paradigm shifts. These changes are largely driven by technological progress, in which cybercrime has acquired specific features and mechanisms that are often difficult to identify and analyze using

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traditional criminological methods. Thus, they pose major challenges for current criminological research, as their dimensions and implications have not yet been fully explored and understood.

Currently, the evolution of computer fraud has an upward trend, due to the increased dependence of economic and social processes on information technologies, conditioning the increased vulnerability not only of individuals, but also of economic actors. For example, in Romania, the number of cybercrimes increased by 148% over 4 years, from 1176 crimes in 2021 to 2914 crimes in 2024 (DIOCT, 2021-2024). The accelerated development of computer fraud is conditioned by an interconnected set of internal and external factors that shape the determination of criminal behavior.

Thus, a fundamental element in the criminological analysis of computer fraud is the identification of the criminogenic factors that contribute to the emergence and development of this type of crime. The investigation of the interaction between endogenous (internal) and exogenous (external) factors is essential, especially in the context of the increasing complexity of the methods used by criminals and the easy access to a virtually unlimited number of potential victims. This approach allows a deeper understanding of the mechanisms that facilitate the initiation, maintenance and expansion of cyber fraud in the contemporary environment.

Applied methods and materials. The authors adopted a broad, complex and deeply interdisciplinary methodological approach to the study. Through the combined use of documentary, statistical, comparative and integrative analysis, the research explored in depth the crime causality of information scams. The study integrates criminology, sociology, psychology, and economics approaches, highlighting how endogenous and exogenous factors influence the criminal behavior of information scams. This integrative approach allows for a thorough and nuanced understanding of the criminogenic factors underlying this criminal phenomenon and contributes crucially to the development of coherent and effective strategies to prevent and combat computer fraud in the context of new forms of crime generated by technological developments.

1. Concept and defining features of computer fraud.

A cybercrime is an unlawful act committed through the use of information technologies, targeting or being carried out against computer networks and systems, data, websites and other digital technologies. It may involve either attacking these elements directly or using them as tools to facilitate other criminal activities (United Nations, 2019, p. 9). Cybercrime differs from traditional crime in that it is outside any physical-geographical boundaries and

can be committed with less effort, fewer resources and more quickly than traditional crime, depending on the type of crime of which it is a derivative.

Europol's European Cybercrime Center (EC3) divides cybercrime into:

- information technology dependent crimes (Europol, 2018), or crimes that can only be committed through the use of computers, computer networks or other forms of information and communication technologies (McGuire, M. and Dowling, S., 2013);
- traditional crimes committed using the internet and digital technologies.

A key distinction between these categories of cybercrime is the role that information and communication technologies play in the commission of the offenses. Thus, information and communication technologies can be either the purpose of the crime or the *modus operandi* used by the offender to achieve a purpose.

In accordance with Article 134²⁵ of the Criminal Code of the Republic of Moldova, a computer system is defined as "any isolated device or set of interconnected or related devices, one or more elements of which, by executing a program, provide or among which provide automatic data processing". This legal definition is fundamental to the understanding of computer fraud, as the computer system is both the context and often the central object or instrument of these crimes.

From the perspective of the authors V. Cushnir and A.T. Dragan, the computer system takes on multiple meanings, revealing the complexity of the interaction between technology and the criminal act:

- the computer system becomes the **direct target of the attack** and is targeted for the purpose of misappropriating stored information. This may include personal data, banking data, commercial information or any other data of economic value.
- as the **instrument of the crime**, the computer system serves as the primary means for committing online fraud. It is used to execute fraudulent actions by facilitating the manipulation of data or automated processes.
- as a **facilitator of crime**, information systems can simplify or amplify the commission of pre-existing crimes in the physical environment which, in theory, could be committed without their use, but whose scale and effectiveness are greatly enhanced by the digital environment.
- **an indispensable element in the genesis of new forms of criminality**, there are categories of offenses which, by their very nature, cannot be committed outside a computer system, being specific only to this environment (e.g. software piracy, cloning of applications) (Cushnir, V., Dragan, A.T., 2017, p. 87).

This relationship between the computer system and the criminal act is clarified by Article 260⁶ of the Criminal Code of the Republic of Moldova, which defines computer fraud. According to the text of the law, computer fraud is characterized by "introducing, modifying or deleting computer data, restricting access to such data or hindering in any way the functioning of a computer system, in order to obtain a material benefit for oneself or for another, if these actions have caused considerable damage" (Parliament of the Republic of Moldova, 2002). Similarly, the Romanian legislator defines in Art. 249 of the Romanian Penal Code computer fraud as "introducing, modifying or deleting computer data, restricting access to such data or hindering in any way the functioning of a computer system, in order to obtain a material benefit for oneself or for another person, if damage has been caused to a person" (Romanian Parliament, 2009). The coincidence of the definition of computer fraud in the Republic of Moldova and Romania not only denotes the harmonization of the national legal context with international standards, in particular with the Budapest Convention on Cybercrime (Council of Europe, 2001), but also facilitates cross-border judicial cooperation and the investigation of cybercrime in a common area of legal and digital security.

Computer fraud, as defined by criminal law, is conceived as an act consisting in the use of information technologies for illicit gain, or represents intentional interference with digital resources, which is not only aimed at disrupting the normal functioning of a system, but is motivated by the desire to obtain a material advantage - either directly (through theft, fraud, embezzlement), or indirectly (through deception, misleading, stealing and selling data, facilitating other crimes).

Thus, from a criminological perspective, the computer system is an essential constituent element of computer fraud. It determines the *modus operandi*, amplifies victimization and imposes new challenges for prevention and combating, requiring a deep understanding of the interplay between technological factors and criminal behavior.

Analyzing these facts from the perspective of derivatives of traditional scams, we observe an adaptation and transposition of classic methods of misleading into the digital environment, where technology becomes the main means of action. Entering, modifying or deleting computer data, restricting access to it or hindering the functioning of computer systems are the modern equivalents of information manipulation and deception used in conventional scams.

2. Specifics on the causality of computer fraud.

In order to prevent and combat this phenomenon, which affects practically all aspects of people's lives, it is necessary to study the causes of this deviant behavior. Crime, being a product of human behavior, is influenced not only by biological factors as the main psychological determinants, but also by external influences. In the context of computer fraud, causes are the types of determinants underlying the commission of these crimes. The relationship between the cause and the crime is a genetic one, in the sense that the former generates the latter as a natural consequence, being a phenomenon that naturally causes another phenomenon - the effect.

In the sphere of social life, however, causality is probabilistic in character, unlike in nature. This means that complex social phenomena, including cybercrime, cannot be explained by a simple, linear relationship. On the contrary, causality in this case is the result of a complex set of interdependent endogenous and exogenous factors.

Moreover, the occurrence of computer fraud is not determined solely by the existence of a single cause, regardless of its nature. It becomes possible only in the presence of favorable circumstances, called criminogenic conditions (Ciobanu, I., 2004, p. 78). These constitute a set of conditions which, although they do not directly generate the offense, create the framework conducive to its occurrence. In this sense, the totality of causes and conditions, without which the offense would not have been possible.

No single, absolute cause can be identified to explain the whole variety of forms and types of crime, including information fraud, which has a multitude of special forms. Each individual offense is conditioned, on the one hand, by the personal characteristics of a particular individual who committed it, and, on the other hand, by the totality of all the circumstances external to that person (Dvoretzky M. Y., Avdeev R. V., 2014, p. 3).

Scam criminality is therefore a complex phenomenon, influenced by a multitude of factors that interact differently depending on the specific circumstances. It is important to emphasize that the determinants act differently on individuals, depending on their psychological particularities, even under similar conditions. Therefore, criminal behavior in computer fraud is the result of a complex interplay between external influences and the individual traits of the person. To be properly analyzed, it must be studied from a systemic perspective, integrating both the internal characteristics of the individual and the external circumstances that have facilitated the crime.

Factors in the context of computer fraud include any element that directly or indirectly influences the emergence and development of this phenomenon.

These factors may have a positive or negative impact on the criminal process and may come from different spheres (social, economic, technological, biological, etc.). However, although a given context may be a facilitating factor, not all persons exposed to it will become criminals. Therefore, all determinants are factors, but not all factors are direct determinants.

Computer fraud criminality cannot be explained by a rigid and unique causal relationship. On the contrary, these frauds evolve in a complex way, influenced by a multitude of factors that shape both the methods used by the perpetrators and the level of technical and psychological sophistication of the attacks.

3. Exogenous Factors of Computer Fraud

Exogenous factors are influences external to the individual, from both the macro- and micro-environment, which contribute to the emergence and development of computer fraud criminality. Although these factors create favorable terrain, they are not directly responsible for the commission of a crime. Their role is to shape the context in which criminal behavior becomes more likely. Moreover, these factors create fertile ground where individuals with certain predispositions may be more likely to commit or become victims of computer fraud.

Macro-environment refers to the set of large-scale external factors that profoundly shape the behaviors and attitudes of individuals and groups in society. These factors, although acting indirectly, have a significant influence on how individuals perceive the world, form their values and, implicitly, how they choose to act, including their susceptibility or vulnerability to phenomena such as cyber fraud.

3.1. Economic factors.

The economic base, through its structure and dynamics, is the foundation that shapes the entire social, political, cultural and institutional superstructure. Thus, the economic state of a state or a region is an essential determining factor in the genesis of types of human behavior, including deviant or criminal (Dogaru, L., 2023, p. 8). Considering the complexity of the criminal phenomenon of computer fraud, it can be generated not only by poverty, but also by wealth and prosperity, or economic factors with criminogenic character are more pronounced in the presence of high inflation, unemployment, poverty indicators, and other economic and financial aspects, which make it difficult for citizens to make a decent living. Economic crises create vulnerabilities for users of information technologies on the one hand, and opportunities for illicit enrichment for criminals on the other.

Poverty and financial inequality exert considerable social and economic pressure, motivating individuals to seek quick gains with minimal effort. This financial desperation makes them extremely vulnerable to get-rich-quick schemes or promises of miraculous investments that in reality turn out to be well orchestrated frauds. Chronic unemployment and the lack of traditional job opportunities can also push both potential fraudsters and future victims online in search of illicit or risky financial solutions.

At the same time, poverty as a real criminogenic factor, is not only an economic (objective), but also a spiritual (subjective) dimension that creates the individual's perception of his status and can determine the formation of criminal intent (Dogaru, L., 2023, p. 8). However, information fraud is committed by those who do not have financial difficulties, but being obsessed by the desire to get rich, resort to crime (e.g. white-collar crime).

The digitization of the economy has opened new fronts and created fertile ground for cyber fraud. Today, a growing number of individuals are increasingly inclined to invest in cryptocurrencies, make online purchases from unverified sources or rely on quick transactions without rigorous checks. In an accelerating pace of economic change, where the potential of information technologies often outstrips the capacity for regulation and public understanding, criminals are constantly discovering and exploiting innovative methods. They rely on a lack of awareness, ignorance of cyber risks and the desire for quick gain to perpetuate fraudulent schemes.

It is important to emphasize that the increase in the phenomenon of cyber fraud is not driven solely by poverty or economic inequality. A key role is played by the vulnerability of victims who, for various reasons, including financial difficulties, lack of digital literacy or a certain naivety, become easy targets for fraudulent schemes. In times of economic crisis, characterized by rising unemployment and financial uncertainty, the frequency of cyber fraud tends to increase exponentially. This is because people become more susceptible to illusory promises of get-rich-quick schemes, be they disguised pyramid schemes, false investments with spectacular returns or opportunities for gain, which in reality only conceal complex scams.

3.2. Social factors.

The set of negative conditions and phenomena present in the structure and dynamics of society favor the emergence, development and maintenance of crime. These factors are related to dysfunctions and deficiencies of the social system, social inequalities, demographic structure and mobility. Since social factors are interdependent and interrelated with

other categories of determinants, they are often viewed as a whole as socio-economic, socio-psychological or socio-cultural factors.

Today we live in a consumer society, where moral values are often relativized and rapid material success is promoted as the supreme goal, regardless of the means used. This mentality creates a climate conducive to the proliferation of computer fraud, which comes to be perceived not only as opportunities for illicit gain, but also as legitimate means of social climbing.

The demonstrative, ambitious and financially aggressive behavior intensively propagated on social networks, has profoundly reshaped the mentality of society, especially among the most active online users - the youth. This constant exposure to opulent, intensely publicized lifestyles creates unrealistic expectations, making getting rich quickly and effortlessly, regardless of the means, an ultimate goal for many individuals.

So, the digital environment is becoming an essential tool for criminals. They are exploiting the potential of information systems to commit identity theft, illegally obtain money and promote dubious investments, capitalizing on the vulnerabilities created by this new mindset and the thirst for material success.

Moreover, in the context of the increased migration that persists in the Republic of Moldova and Romania, information systems have become the most accessible and quickest way to communicate with those close to them. Criminals exploit this dependency, using various tools, including those assisted by artificial intelligence, to mislead, deceive and commit identity theft, all with the aim of enriching themselves. Thus, the online environment is as useful as it is dangerous, making every user a vulnerable potential victim.

The micro-environment is an individual's immediate and most influential social circle. It includes family, friends, colleagues and other small groups with whom the individual interacts frequently. The influence of the micro-environment is strongly determined by the norms and values imposed by these groups, which can decisively shape behavior. In the case of computer fraud, the micro-environment is often a factor that can directly encourage, justify or even shape fraudulent behavior through peer pressure and interpersonal connections.

Family. Although the family functions as an essential source of support and socialization, there is also another side, through which it becomes an environment conducive to the genesis or perpetuation of antisocial behaviors (Dogaru, L., 2023, p. 10), including those related to information fraud and vulnerability to virtual risks. The family has an essential role in imprinting social skills, a value standard, attitudes of conformity or, on the contrary, of maladjustment to the dominant social

values and provides the necessary context for the formation of a personality capable of being aware of risks in the digital environment.

Specific determinants include the socio-economic status of the family, the family structure (full or single-parent family, united or divided), the internal emotional climate, the educational methods applied, and the child's position within the family. These can directly influence the level of digital literacy and awareness of virtual risks transmitted to its members.

A fundamental aspect is the pattern of behavior that parents display in social relationships and online, which has both an immediate effect on the child and a long-term influence. Children exposed to a home environment in which ethical and legal norms are ignored or relativized may develop a high tolerance for breaches of social rules, including those related to digital ethics. Also, in families where materialistic values are emphasized to the detriment of moral principles, there is an increased risk that young people will take on the idea of 'financial success' achieved through criminal acts, reducing their perception of the seriousness of illegal acts committed in cyberspace and decreasing their vigilance with regard to their own cyber vulnerabilities.

Despite the multitude of influences to which individuals are exposed in modern society, family factors explain significantly more of the variation in rates of antisocial behavior than any other variable (Dobрила, M. C., 2011). Thus, the family not only directly influences the individual's behavior in childhood, but may also contribute to the development of criminogenic predispositions or, conversely, to a heightened vulnerability to cyber fraudsters, which later manifests itself in adult life.

School is also an exogenous factor that strongly influences the shaping of individual behavior. It has an important role not only in the process of socialization of the child but also in education. Its role is important in the process of socialization, contributing greatly to the internalization of values, norms and social rules. However, the school environment may favor the development of deviant behaviors, depending on the quality of education provided, the educational climate (conducive to learning and inclusion), the interpersonal relationships between students and teachers and the general climate in the institution (Pantaz, S., 2012, p. 329).

A determinant factor, often underestimated in this context, is the influence of the peer group, or belonging to an environment or group with deviant or non-conformist tendencies may favor the adoption of undesirable behaviors and involvement in illicit acts, including cheating, computer fraud or other economic and social crimes. Peer pressure, the desire to belong and to be accepted can lead young people to ignore moral and legal norms and engage in behaviors that they would not have engaged in individually.

Even in adulthood, a person with seemingly firm values may change his or her views and priorities under the significant influence of friends and co-workers. Similarly, co-workers and the nature of work tasks exert a considerable influence on the individual, favoring or discouraging certain deviant behaviors. As a rule, the moral traits and work ethics of co-workers can be transmitted to other employees, shaping perceptions of risks and rewards, so that individuals may come to underestimate legal consequences, being encouraged by negative role models around them (Pantaz, S., 2012, p. 328).

In the specific context of cyber fraud, a work micro-environment in which the rush for gain, the desire for get-rich-quick through the use of digital manipulation and speculation, dominates, has a major impact on the development and consolidation of criminal behaviors. It becomes a determining factor in committing computer fraud, transforming a professional environment into a criminogenic one.

3.3. Political factors.

These factors relate to issues of governance, legislation, political stability and how the state manages cyber risks. They can facilitate or, conversely, discourage the emergence and proliferation of cyber fraud.

The involvement of political factors in criminogenesis becomes significantly more pronounced in two exceptional situations: in times of war and during revolutions (Dogaru, L., 2023, p. 11). Political crises and armed conflicts, both at home and in neighboring countries, change the prioritization of national security at the expense of civil rights and the weakening of legal control during conflict. War-driven demographic and economic changes (e.g. migration, scarcity, financial crises) make the population vulnerable, making them easy targets for online fraud schemes (e.g. fake donation requests, fictitious offers of help). Amid chaos and diminished cyber vigilance of institutions, criminals exploit security breaches and desperation, using advanced technologies to commit large-scale, often transnational fraud.

Political crises create antagonistic poles of power and polarize individuals, social and economic anarchy takes hold and laws are often ignored. This provides an ideal breeding ground for professional computer fraudsters, while also stimulating non-frauders to turn to cybercrime. In this unstable context, the vulnerabilities of information systems and users are maximized, allowing for the proliferation of fraud schemes, data theft and information manipulation.

3.4. Technological factors.

A distinct set of exogenous criminogenic factors, which contribute decisively to the development and diversification of computer fraud, are technological factors. The accelerated advancement of information technologies has profoundly redefined the way people interact, communicate and transact, facilitating not only the evolution of society but also an unprecedented expansion of crime. In this context, elements such as accelerated digitization, anonymization capabilities and global access to a vast user base have created a highly conducive environment for fraudulent activities.

The global expansion of the internet and the widespread use of smart devices have given criminals sophisticated tools to run their fraud schemes. Moreover, the virtual environment allows them to operate under false identities, using anonymous servers, encryption networks, crypto-currencies and other advanced technologies that provide them with increased invisibility and a perception of impunity.

The exponential development of artificial intelligence and process automation has led to a remarkable refinement of fraud methods, enabling criminals to carry out attacks on a larger scale, with greater precision and with much greater difficulty to detect. In parallel, social networks are being intensively exploited as vectors for the spread of fraudulent schemes, capitalizing on the psychological vulnerabilities of users through advanced social engineering techniques and personalization of malicious messages.

3.5. Legal/organizational factors.

These factors are mainly legislative deficiencies and/or ineffective enforcement of existing legal rules. A legal framework that is weak, unstable or not quickly adapted to new forms of digital fraud can encourage their emergence and proliferation. Criminals exploit legal loopholes.

An unstable or confusing legal framework provides ample opportunities for cyber fraudsters to adapt and exploit loopholes. Criminal law needs to keep accelerating with new methods of cyber fraud, especially in the context of digitization and globalization, where they are becoming increasingly sophisticated and cross-border. In the absence of legislative updates clearly regulating new digital fraud schemes, detecting fraud and applying sanctions can be difficult or simply ineffective. The sophisticated nature of cyber fraud, which often involves complex financial schemes, requires extensive investigations, detailed financial and digital analysis and specialized technical expertise (e.g. digital forensics, cyber security). Limited resources and lack of specialized staff can hamper the effective resolution of these cases.

Last but not least, legal uncertainty and uneven interpretation of criminal rules seriously affect the effectiveness of the fight against cyber fraud. Unclear or inconsistent interpretation of criminal law rules leads to major difficulties in correctly framing offenses and establishing the legal liability of persons involved in digital fraud schemes.

4. Endogenous factors of information fraud.

The endogenous factors of computer fraud refer to the internal aspects of the individual that contribute to the formation of criminal behavior aimed at obtaining illegitimate benefits through deception and/or abuse of trust in the digital environment. These factors include psychological traits, personal motivations and behavioral predispositions, which influence the decision to resort to such acts in cyberspace.

Instincts, as part of the primary motivational factors, are innate reactions that may underlie criminal actions. These inherent tendencies and impulses do not operate in isolation, but are profoundly shaped and directed by continuous interaction with the social environment (Ciobanu, I., 2004, p. 71).

Life experiences, education and social context influence how these instincts manifest themselves. Thus, they do not automatically lead to the commission of computer fraud or other crimes, but under specific social, economic and psychological conditions, mediated by interaction with the environment, they can become triggers for criminal behavior.

Similarly, the behavior of computer fraudsters is determined by needs generated by various deprivations. Computer fraud, like other criminal behaviors, can be understood as pathological responses to unmet needs. These may be basic survival needs (such as material needs) or the desire for social status, recognition or quick and unwarranted success.

These needs are the foundation of all self-interests, whether offender or victim. The former are of physiological and biological nature, while interest as the main promoter of deviant behavior (Bejan, O., Bujor, V., 2004, p. 40) is the result of cognitive processes of the individual, being oriented towards changing and improving the conditions of life to ensure the satisfaction of these needs (Bejan, O., 2009, p. 18). Thus, interest represents the direction of action of the individual, aiming to maintain or change his situation in order to create the conditions necessary to satisfy his own needs. In the context of information fraud, a perverted interest or a diversion of interest, fueled by real or perceived deprivation, can direct the individual towards illicit ways of gratification, exploiting the vulnerabilities of the digital environment.

It is important to understand that exogenous factors, which shape the social, economic, cultural, technological and political context, are common

to both criminals and victims of cyber fraud. This means that both offenders and victims are exposed to the same external pressures, opportunities and vulnerabilities. Moreover, for the most part, these exogenous factors are similar in nature, but for a variety of complex reasons lead to fundamentally different end-states: some individuals become offenders while others become victims.

The endogenous factors of offenders (such as deprivation-driven motivations, impulsive tendencies and perverted interest in quick gains through illicit means) predispose individuals to seek and exploit fraudulent opportunities. They are driven by the need to satisfy their own needs (real or self-created) through manipulation and deception, using information systems as essential tools to achieve their goals. In this context, the endogenous factors of offenders are: material motivation, desire to get rich; lack of ethics, poor moral development, lack of empathy; rationalization and justification of illicit actions; manipulative intelligence, specific cognitive skills; risk-taking ability, increased impulsivity; tendency to self-assertiveness, narcissism, need for control/power.

5. Endogenous factors that increase victim's risk of vulnerability.

Endogenous victim factors (lack of digital literacy, naivety, gullibility, emotional vulnerability, impulsivity, unrealistic optimism or financial desperation) make certain individuals particularly susceptible to fraudulent tactics. These cognitive, psychological and behavioral vulnerabilities are the "leverage" that the criminal identifies and exploits.

Computer fraud is not the result of an isolated factor but is the product of a dynamic criminogenic symbiosis. It arises from the interplay between the internal predispositions and motivations of the perpetrator and the vulnerabilities of the victim, amplified and facilitated by the particularities of the digital environment and the influence of exogenous factors. Compared to other crimes, fraud requires an unusual degree of cooperation from its victims. A fraud can only work if the victim takes positive action. It is therefore imperative that the specific vulnerabilities of the victim are identified and exploited in order for the fraudsters' actions to have a purpose and lead to the success of the scheme. These vulnerabilities, in relation to and enhanced by the favorable circumstances of the environment (technological, social, economic), provide the optimal conditions for the fraud to succeed.

Victims' endogenous factors are cognitive and psycho-emotional. Cognitive vulnerabilities include:

- **lack of digital literacy** - insufficient knowledge of how the internet works, common cyber risks, and low internal capacity to critically

evaluate online information. Note that the most vulnerable in this respect are the elderly and minors.

- **trust and authority** - acceptance of information or promises without rigorous verification, based on excessive reliance on appearances or perceived authority. In information fraud, perpetrators tend to misrepresent themselves as authority figures or legitimate entities (e.g., banks, government institutions, utility companies, investment experts) in an attempt to assert their credibility and gain the trust of victims (Modic, D., Lea, S. E. G. (2013).
- **wish-fulfillment dominated thinking** - manifested by the individual's tendency to believe what they wish to be true (e.g. unrealistic earnings promises or exceptional offers), systematically ignoring obvious warning signs. In the specific context of computer fraud, this vulnerability is strategically exploited: offers that appear to be personalized, opportunities presented as unique, or time-limited (generating urgency and pressure) are specifically designed to induce increased compliance with the scam (Modic, D., Lea, S. E. G. (2013). They rely on the victim's desire to gain a benefit, paralyzing critical thinking and facilitating acceptance of fraudulent actions.

Psycho-emotional vulnerabilities are:

- **loneliness and the need for approval** - social isolation and loneliness create particularly fertile ground for online fraudsters, who exploit with remarkable cynicism systematically the fundamental need for human connection. This is visible, for example, in the case of romance scams, where criminals build fake relationships to emotionally manipulate victims, turning human desires for affection and acceptance, as well as fears of being alone, into illicit activities.
- **vulnerability to emotional manipulation**, exacerbated by factors such as fear, greed and compassion (false requests for help), has the capacity to suppress rational thought and critical judgment. This susceptibility is significantly heightened by the idealized image of a perfect life, intensely promoted on social networks, which amplifies individual vulnerability. The tendency to feel anxious or anxious about not living up to the standards of a rich and happy life amplifies the fear of missing out on opportunities (the FOMO phenomenon - "Fear Of Missing Out").
- **delusions of superiority and control** - individuals tend to positively overestimate their own abilities and future prospects, believing that they have greater control than is real (Modic, D., Lea, S. E. G. (2013). This overestimation, combined with a lack of self-control (tendency to act impulsively under pressure), causes

potential victims of cyber fraud to severely underestimate their vulnerability. They believe themselves to be more able to detect fraud and more in control of the situation than they really are, thus opening the door to cyber manipulation.

- **lack of self-control and risky behavior** - individual's capacity for self-control directly influences their choices, increasing the compliance of potential victims and the likelihood of crime. This ability weakens with prolonged exposure to online stimuli, leading to irrational decisions. Risky online behavior is a lottery: a potential loss is underestimated in the face of a perceived quick gain. Lack of self-control exacerbates this distorted perception, prioritizing immediate benefit and making individuals vulnerable targets for information fraudsters.

Computer fraud thrives at the intersection of these sets of endogenous factors. The perpetrator with his internal motivations and manipulative skills actively seeks victims whose internal vulnerabilities fit his schemes perfectly. It is a match between a perpetrator and a victim. Victim's endogenous vulnerabilities, particularly those related to information processing and emotion control, create psychological opportunities that criminals exploit for material gain. Therefore, understanding these internal dynamics is fundamental not only for offender profiling, but also for the development of victim prevention and resilience strategies aimed at strengthening psychological and cognitive capacities to digital manipulation.

Conclusions.

Exogenous and endogenous factors are relevant in conditioning or determining the commission of criminal acts, due to their frequency and importance. Although each of them can be an independent cause of computer fraud, these factors often interact and combine, exponentially increasing the risks and likelihood of criminal behavior.

The perpetration and spread of computer fraud is the result of a natural and deep interdependence between endogenous and exogenous factors of different nature. Exogenous factors create the context and opportunities for cyber fraud to occur. These external factors are in principle common to both potential criminals and potential victims, and any vulnerability, regardless of its nature and the personality of the victim, can be exploited by criminals acting in a targeted manner. However, the way in which these external factors manifest themselves is determined by the interplay of endogenous factors in each individual.

In victims of computer fraud crimes, endogenous factors transform the digital context into a major personal vulnerability. Therefore,

understanding this criminogenic synergy is necessary in order to develop effective prevention strategies aimed at both reducing external opportunities and strengthening the internal resilience of individuals.

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ETIOLOGY OF ONLINE SCAMS FROM A CRIMINOLOGICAL PERSPECTIVE

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Abstract

The article analyzes the transformation and proliferation of scams in the digital age, emphasizing the need for a systemic criminological approach to effectively understand and combat this phenomenon. With society's shift towards a service and information-based economy, the internet has become a fertile ground for new forms of scams, influenced by technological, economic, social and political progress. These cyber-crimes are seen as a low-risk alternative to traditional scams and are exacerbated by the increasing accessibility of technology.

The article identifies general and specific causes of online scams. General causes include social vulnerabilities, economic factors, and political and administrative weaknesses. The specific causes of the online environment include the ingenuity of social engineering, anonymity and physical distance that reduce the perceived risk to criminals, the scalability and automation enabled by artificial intelligence, and poor digital hygiene of users.

The interconnection between these causes is essential. The globalization and cross-border nature of the internet amplifies each factor, creating an environment in which criminals operate with low risk and reach a vast number of victims. The article emphasizes that the success of scams depends both on the qualities of the perpetrators (intelligence, adaptability, unscrupulousness) and the vulnerabilities of the victims (naivety, carelessness, greed). The phenomenon of latency is also a victimological consequence of the perceived inefficiency of the justice system.

In conclusion, combating online scams requires a holistic and coordinated approach, combining advanced technological security with massive digital education, strengthening the international legal framework and addressing the underlying social and economic problems.

Keywords: *online scams, cybercrime, computer fraud, causes, conditions, latency, prevention*

1. Introduction.

The profound transformation of the economy, largely induced by technological advances, has generated a qualitative and quantitative mutation of scams. These crimes, influenced by negative technological, economic, social and political changes, have taken on new characteristics and properties that have not yet been fully explored by modern criminology.

In order to understand and effectively combat the phenomenon of scams, it is essential to examine them from the point of view of the immediate aim of criminological research: to identify, analyze and describe the causes of the offences. This approach is important, because simply

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noting the development of crime does not provide solutions for prevention, but merely presents the consequences rather than the determining factors.

Research into the criminal phenomenon of scams, especially online, requires a systemic approach. This involves studying their evolution, their specific properties, the causes that have generated the observed effect and the conditions or circumstances in which the criminal actions took place. Such a criminological perspective provides valuable tools for investigating the individual processes and circumstances that led to the commission of the criminal act. It is important to understand that the determinants of scams cannot be analyzed in isolation, but must be placed in a complex context – social, economic, biological, psychological or other – where factors interact and influence each other, contributing to the formation of criminal behavior.

It is also important to emphasize that the determinants of computer crime act differently on individuals, even under similar conditions, depending on their psychological particularities. Therefore, criminal behavior is the result of a complex interplay between external influences and individual traits of the person, to which are added aspects related to the personality of the victims. For an accurate analysis, this behavior must be studied from a systemic perspective, integrating both the individual's internal characteristics and the external circumstances that have facilitated the crime.

2. Computer-related crimes committed with the use of information systems by scam

Contemporary society is going through a new fundamental stage of development, marked by a reduction in the importance of industrial production and an exponential growth in the role of services and information. This transition has been catalyzed by the introduction and accelerated integration of information technologies, which have generated new communication paradigms. Today, the vast communicative capabilities of the Internet are being exploited in almost all spheres of human existence: economics, politics, public administration, science and education. The virtual world offers increasing opportunities, reflecting, and in many cases, extending the possibilities inherent in the real world.

As this digitization process develops and globalizes, it is inevitable that scams, as a social phenomenon, will emerge and proliferate on the web. Despite its virtual nature, online transactions and interactions have real consequences. Criminals are constantly and with increasing ingenuity exploiting the technological capabilities of the internet, inventing ever more sophisticated methods of social engineering, including the widespread use of artificial intelligence capabilities, to gain control over the assets of remote citizens. This migration of scams to the virtual environment and the ability

of fraudulent tactics to quickly adapt to the digital landscape is a major challenge for online security.

Computer-related crimes committed with the use of information systems by fraud are a category of criminal offenses in which the perpetrator uses computer systems or communication networks (such as the internet, applications, e-mail or social networks) to mislead a person or institution and obtain an unfair material benefit, usually money or personal data. These crimes combine various forms and can overlap with traditional fraud, with the computer as the main tool (Soltan, V., 2019). Among the categories of online-specific scams are:

- ***Confidence Tricks*** - misleading a person or a group of persons (targets) about the possibility of obtaining substantial financial gains or achieving an important goal (Maritz, A., 2004, p. 80). These tricks exploit weaknesses of the human personality, such as greed or, sometimes, lack of scruples. Victims are often lured by the desire for get-rich-quick, effortless monetary gains or low-risk investments.

- ***Advance Fee Fraud***, also known as 'Nigerian letters' and '419 fraud' (after the section of the Nigerian Penal Code that criminalizes it) is a widespread form of confidence scam that exploits mainly the victims' greed and desire for quick gain, but also empathy or willingness to help. The criminals' real objective is solely to extort funds in the form of fees, commissions or administrative costs. This type of fraud is a classic example of social engineering, which psychologically manipulates the victim into acting against his/her own financial interests (Maritz, A., 2004, p. 81).

- The ***Fake Escrow scam*** involves the creation of a fake escrow website, controlled by the scammer, used to convince sellers to send valuable goods—such as electronic equipment—under the pretense of a secure transaction. After receiving the goods, the site is shut down, and the scammer disappears with the products (Maritz, A., 2004, p. 82).

- The ***“Salami” scam*** involves modifying banking software to round down transaction amounts, with the resulting fractions being redirected to an account controlled by the scammer.

- The ***“Spanish Prisoner” scam*** relies on emotional manipulation, convincing victims to send money to help a supposedly important person being held in detention under a false name, with promises of large rewards after their release (Maritz, A., 2004, p. 85).

- ***E-commerce scams*** involve deceiving buyers or sellers on online platforms through fake websites, non-existent offers, counterfeit products, or fraudulent payment methods.

- ***Electronic funds transfer scams*** involve manipulating bank transactions or online payment platforms to illegally redirect funds to accounts controlled by scammers (Soltan, V., 2019).

- ***Identity theft scams*** involve the unauthorized use of a person's personal data to obtain financial benefits or access services, such as opening a bank account, applying for loans, or making purchases in the victim's name (Maritz, A., 2004, p. 86).

- ***Investment scams*** involve luring victims into false or overly profitable financial schemes, such as pyramid schemes, fictitious cryptocurrency offers, or non-existent stock market opportunities, promising quick and guaranteed returns.

Online scams represent only a fraction of the increasingly vast arsenal of cybercriminals. These schemes are evolving and diversifying exponentially, becoming a major challenge for global digital security. Criminals constantly adapt to new technologies and security measures, continually inventing innovative methods of fraud.

To develop effective policies for the prevention and combatting of cybercrime, it is essential to identify and understand the root causes behind the intention and actualization of criminal behavior. In criminology, a cause is defined as the phenomenon that naturally generates a consequence—namely, the crime itself. Identifying causality is fundamental, as merely observing criminality does not help us prevent it, since it provides data only on the outcome, not on the determining factors.

3. Causes of online scams

Unlike the laws of nature, causality in the social sphere—including in criminality—has a probabilistic character. Social phenomena, such as crimes, cannot be explained through a simple cause-and-effect relationship, but rather through a complex network of interdependent social factors (Bargau, M., Nastas, A., 2022, p. 78). The causes of criminality must be sought primarily within the realm of social existence, being influenced by the objective living conditions of individuals, the dynamics of social relationships, and ongoing economic and cultural transformations.

In addition to causes, the conditions of criminality are phenomena which, although they do not directly generate crime, serve as favorable circumstances for its emergence and persistence. These conditions actively contribute to the shaping of criminal phenomena. The choice of how the criminal intent is carried out—the *modus vivendi*—the scale and nature of the damage, as well as the time and place of the crime, largely depend on these existing conditions. Causes and conditions interact in bringing about

crime, as cause alone is not sufficient without the presence of the necessary conditions (Bargau, M., Nastas, A., 2022, p. 81).

The criminological causes of fraud can be classified into two major categories based on their scope of applicability: there are *general causes*, which are relevant to all types of crimes, and *special causes*, which are specific only to the phenomenon of scam.

3.1 General causes of computer scam

General causes refer to those fundamental factors that contribute to the emergence and persistence of criminal phenomena in society, regardless of the specific type of crime. These factors create a fertile ground for deviant behaviors and can influence both the individual decision to commit a crime and the crime rate at the macro level. They are often interconnected and mutually reinforcing.

Online frauds, though specific to the digital environment, are profoundly influenced by a set of general causes of criminality that take on new dimensions in the virtual space. These are not merely isolated offenses, but manifestations of broader dysfunctions within society. The main general causes include:

- ***Social causes.*** Social vulnerability plays a crucial role in the proliferation of online scams. Many users browse the internet with a low level of digital literacy, lacking a full understanding of online risks and failing to recognize common signs of fraud, such as unusual requests for personal data or overly attractive offers. This lack of awareness, combined with a natural tendency toward excessive trust, makes them susceptible to social engineering techniques through which scammers manipulate emotions and decisions—for example, personalized attacks based on information users themselves share online, as well as the use of AI chatbots, AI voice cloning, Deepfake technology, and more (Neagoe, V., Borsas, S.-S., 2016).

Psychological and social pressures, intensified by the idealized image of a perfect life promoted on social media, further increase vulnerability. The anxiety or restlessness stemming from not living up to a brand's standards or an affluent, happy lifestyle can make individuals more prone to manipulation by amplifying the fear of missing out (FOMO) and significantly weakening critical judgment.

Moreover, social isolation and loneliness provide fertile ground for fraudsters who exploit the human need for connection, as frequently seen in romance scams. These emotional and cognitive vulnerabilities are cynically exploited, turning human desires and fears into gateways for illicit activities.

- ***Economic causes*** play a significant role in fueling online scam, acting both as motivations for offenders and as vulnerabilities for victims.

Poverty and financial inequality create substantial pressure, pushing individuals to seek quick and effortless gains. This economic desperation makes them highly susceptible to "get-rich-quick" schemes and promises of miraculous, high-return investments which, in reality, are fraudulent.

Additionally, unemployment and the lack of traditional job opportunities can drive both potential scammers and victims toward the online environment in search of financial solutions—whether illicit or high-risk. Furthermore, the globalization of financial markets and the ease of online transactions facilitate the rapid and often anonymous movement of funds, which substantially complicates authorities' efforts to trace and recover stolen money.

A major segment of this phenomenon is manifested through job market scams in the online space. These include fake job offers that require upfront investments for training, materials, or work visas; the collection of personal or banking data under the pretense of recruitment; and employment in money laundering operations—also known as the "money mule" scheme or dropping, in which victims are recruited to transfer illegally obtained money through their personal bank accounts to other individuals. Another example includes pyramid schemes or multi-level marketing (MLM) strategies (Maritz, A., 2004, p. 85), which consist of job offers that promise high incomes if the victim recruits others or purchases products.

- *Political and administrative causes.* Political and administrative weaknesses significantly contribute to the spread of online fraud. The lack of unified international regulations is a major issue, as cybercrime disregards national borders. Legislative discrepancies and ineffective cooperation between countries create circumstances in which criminals can operate without fear of prosecution.

Online scams – an essential component of information-related crimes – pose an increasingly complex and adaptable global challenge for digital security. The use of AI significantly complicates the tasks of identifying and tracking offenders online. AI enables the enhancement of anonymization techniques and the concealment of digital traces. Attacks can be conducted through multiple jurisdictions and servers, and algorithms can automatically erase evidence, overwhelming the investigative capacities of law enforcement agencies, which often lack the necessary technical expertise.

The rapid advancement of AI often outpaces the ability of legislative and regulatory systems to keep up. The current legal framework may be inadequate for prosecuting new forms of AI-assisted scam or for establishing jurisdiction in transnational cases. This gap between technological progress and regulation creates a legal void that criminals can exploit, generating loopholes in the justice system.

Moreover, the outdated legislative and institutional frameworks of many states fail to keep pace with the rapid evolution of technology and online fraud techniques. Without specialized, well-funded, and properly equipped structures to combat this type of crime, law enforcement faces immense challenges in investigating and preventing cyber offenses. This lack of resources and expertise directly contributes to the spread and development of fraud in the digital space. Finally, corruption undermines law enforcement efforts, allowing criminals to operate with a significantly reduced risk of being caught and held accountable for their actions.

- **Technological causes** are essential pillars in the evolution of online scams. Increasing access to technology and the internet has created a vast field of potential victims and has simplified the creation of fake accounts and identities for offenders. At the same time, the inherent anonymity of the internet lowers the perceived risk for scammers, making it significantly harder for authorities to identify and prosecute them.

A key role in the sophistication of fraud schemes is played by the rapid development of artificial intelligence (AI). AI enables criminals to create highly convincing fake content, such as audio and video deepfakes, to automate ultra-personalized phishing messages, and to simulate human interactions to manipulate a massive number of victims (Tarlogic, n.d.). In addition to these offensive uses, inherent vulnerabilities in software and security systems remain constant opportunities exploited by hackers to gain access to data or networks.

In essence, technology – meant to connect and enhance efficiency – becomes, through these breaches and the abuse of AI, a powerful tool in the hands of criminals.

- **Personal/individual causes** of a psychological and sometimes anthropological nature (such as age, gender, genetic/biological predispositions, temperament, etc.), play an important role both in the formation of criminal intent and in the degree of vulnerability to online scams. Certain personality traits – such as impulsiveness, excessive greed, or lack of empathy – can predispose individuals to become either offenders or victims.

Moreover, a reduced capacity for critical thinking, manifested through difficulty in assessing risks or recognizing warning signs in suspicious online offers, makes many people susceptible to scam. Scammers often exploit specific psychological vulnerabilities: for instance, in romance scams, loneliness, the desire for affection, and emotional fragility are cynically manipulated by criminals.

Therefore, the phenomenon of online fraud, although deeply rooted in the general causes of criminality (social, economic, political, administrative, and individual), is exponentially amplified by two defining

features of our era: globalization and the cross-border nature of the internet. These are not merely auxiliary factors, but true catalysts that give online scams an unprecedented scale and complexity.

- **Globalization.** The internet has interconnected people with varying levels of digital literacy, awareness, and prosperity. This means that offenders can access an unlimited number of potential victims by exploiting precisely those social vulnerabilities – such as digital naivety, excessive trust, anxiety about social status, or loneliness – that are more pronounced in certain regions or demographic groups.

As artificial intelligence (AI) advances, it significantly amplifies individual vulnerabilities, particularly in targeted online fraud. Every person becomes an easier target due to the way AI operates:

- autonomous decision-making and machine learning allow AI to personalize and deploy scams without direct human intervention. This means scam tactics are much more precise and tailored to each individual, using their online data and behaviors to identify weaknesses.
- the absence of any moral or ethical compass in AI represents a major challenge. Artificial systems do not comprehend the social consequences of their actions. They make purely algorithmic decisions, which can be profoundly unethical or harmful to humans. This enables AI to facilitate cyber fraud on an unprecedented scale and precision, exploiting human psychological and emotional vulnerabilities, from greed and gullibility to fear and desperation.

In essence, AI is transforming the way scams are executed, making them harder to detect and fight, as they are now perfectly tailored to each person's profile and weaknesses. This level of personalization, coupled with AI's lack of ethics, dramatically increases the risks for every one of us.

Similarly, the globalization of financial markets and the ease of cross-border online transactions are both an economic blessing and a criminological curse, making it extremely difficult to track and recover stolen funds. A scammer can launch an attack from one country, operate servers in another, and withdraw funds in a third – using cryptocurrencies or banking services from lenient jurisdictions. This mobility of criminal capital significantly reduces the perceived risk for offenders, encouraging the spread of scams.

Overall, globalization and the cross-border nature of the internet exacerbate every general cause of online scam. They create an environment in which criminals can operate with a low risk of being caught, access an enormous number of potential victims, and move funds at lightning speed. Therefore, effectively combating online fraud cannot be a local or national

task; it requires a global, coordinated, and adaptive approach, based on close collaboration between governments, financial institutions, tech companies, and users themselves.

3.2 Special Causes of Online Fraud

Beyond the general factors that influence all types of crime, online frauds are driven by a set of causes specific to the digital environment, which exploit the peculiarities of the internet and virtual interactions. These distinct causes make online fraud a unique phenomenon with its own mechanisms of operation and proliferation.

Social Engineering Adapted to the Digital Environment. This is probably the most important specific cause. Offenders do not rely on violence or physical theft, but on psychological manipulation of the victim, using techniques specially adapted for online contexts:

- *phishing and spear-Phishing* — creating false but highly convincing emails, messages, or websites that imitate legitimate institutions (banks, government services, online stores) to steal login credentials, personal information, or financial data (Cojocar, R., 2009, p. 17).
- *romance scams* — building fake relationships, often on dating platforms or social networks, to gain the victim's trust and then ask for money under various emotional pretenses.
- *fake investment scams* — promoting fictitious investment opportunities (in cryptocurrencies, stocks, brokerage, etc.) with unrealistically high returns, convincing victims to transfer funds to platforms controlled by scammers.
- *identity forgery and impersonation* — presenting oneself as a trusted person (a family member in trouble, a representative of an authority) to request urgent money transfers or confidential information (Maritz, A., 2004, p. 88).

Anonymity and physical distance are essential conditions that facilitate online fraud, fundamentally distinguishing it from traditional scams. In the virtual environment, the offender and the victim do not interact directly, eliminating spatial constraints and drastically reducing the perceived risk for the scammer. This freedom allows criminals to operate from anywhere in the world, without being limited by the victim's geographic location or the jurisdiction where the crime is committed.

Moreover, identifying offenders becomes extremely difficult. They often use methods such as VPNs (Virtual Private Networks), Tor (The Onion Router), or fake accounts, routing their traffic through servers located in different jurisdictions. All these tactics increase anonymity and greatly

complicate efforts for criminal prosecution, providing a sense of impunity that encourages the proliferation of this type of crime.

Scalability and Automation. One of the key factors driving the scale of online scams is their capacity for scalability and automation. With minimal effort, criminals can launch massive attacks, sending thousands or even millions of fraudulent messages – whether phishing emails or deceptive SMS messages – simultaneously, exponentially increasing the number of potential victims.

This efficiency is dramatically amplified by AI, which enables scammers to automatically generate hyper-realistic texts and images, create incredibly convincing audio and video deepfakes that imitate the voices or appearances of real people, and automate interactions through sophisticated chatbots (Tarlogic, n.d.). All these factors make scams much harder to detect, transforming them into a global, automated threat of unprecedented scale.

Poor Digital Hygiene. A major factor fueling online scams is the lack of digital-specific awareness and poor digital hygiene among users. Many still do not realize that the risks in the virtual space are just as real and serious as those in physical life.

This distorted perception, combined with weak security practices, creates opportunities for criminals. The vulnerability of online scam victims is often a direct function of their naivety and inattention. Despite increasing warnings, many users navigate the digital environment with excessive trust, underestimating risks and often assuming that they will never be targeted by a scam.

Inattention, on the other hand, manifests as a lack of vigilance toward details that could reveal a deception. People rush to click on links, download files, respond to messages, or enter personal data without verifying the source, the message’s grammar, or the website’s URL.

This combination of naivety and inattention creates fertile ground for scammers. They rely on the fact that, in a moment of weakness, the victim will fall prey to manipulation techniques.

These specific causes, interacting with the general social, economic, and administrative factors, create a complex ecosystem in which online fraud thrives. Combating them therefore requires a multidimensional approach that combines advanced technical security with widespread digital education and international cooperation.

4. Latency of online scams.

The phenomenon of latency is fueled by a complex combination of general and digital-environment-specific causes, transforming the real scope of the problem into a vast “iceberg,” with only a small part visible above the surface.

Among the general causes contributing to the latency of information crimes, we distinguish (Bargau, M., Nastas, A., 2022, p. 55):

- *shame and social stigma* — victims of scams, regardless of the environment in which they occurred, often experience shame, embarrassment, and even guilt. Adding a layer of perceived naivety or carelessness, especially in online contexts, can amplify this feeling, leading them not to report the fraud for fear of being judged or ridiculed.
- *lack of trust in the justice system* — victims often perceive the legal system as inefficient or believe that the chances of recovering losses are minimal. This lack of trust is often a general cause of criminal latency.
- *cost of effort versus benefit of reporting* — reporting a scam can be cumbersome, involving time, documents, and interactions with authorities. For small damages, victims may consider that the effort is not justified by the potential benefit of recovering money or holding offenders accountable.

The specific causes of latency in online scams include:

- *anonymity of the offender* — the fact that the offender operates remotely and is often anonymous makes the perceived chance of catching them extremely low, which can demotivate victims from contacting law enforcement.
- *difficulty in tracking fund flows* — money is rapidly transferred through multiple jurisdictions, cryptocurrencies, or obscure banking services, discouraging victims who realize their chances of recovering losses are minimal.
- *lack of awareness that a scam has occurred* — sometimes, especially with complex schemes (e.g., pyramid schemes, certain sophisticated forms of phishing), the victim may initially not realize they have been defrauded, attributing the loss to bad luck or a poor investment rather than criminal action.
- *ongoing psychological pressure and social engineering* — scammers, even after the victim has lost money, may maintain communication channels, inducing hope of recovery or subtle threats to discourage reporting.

Thus, the latency of online scams is a systemic problem, resulting from the convergence of psychological, social, economic, administrative, and technological factors. Combating it requires not only increased law enforcement efforts but also massive public education campaigns and simplification of the reporting process to encourage victims to break their silence.

5. Conclusions

The analysis of the causality of online scams reveals a remarkably complex criminal landscape, where the general causes of crime and those specific to the digital environment interconnect in a dynamic symbiosis. This phenomenon is not merely a sum of factors but an ongoing interaction that gives rise to an ever-evolving threat. On one hand, the general causes create pressures and temptations for both potential offenders and victims. On the other hand, the causes specific to the online environment act as unique amplifiers and facilitators.

At the core of this causal symbiosis lie the personal qualities of both scammers and victims, interconnected and influenced by certain conditions specific to information crimes, which consequently determine not only criminal behavior but also victimization. Scammers use their intelligence, adaptability, lack of scruples, and technical expertise to devise complex schemes and manipulate. Victims, on the other hand, are vulnerable due to naivety, inattention, greed, loneliness, or despair. The latency of online scams, as a product of the victim's cognitive activity filtered through moral, cultural, and emotional traits, is a direct consequence of this complex interconnection of causes.

Therefore, it is not enough to combat only the technical aspects or to educate victims alone. An effective strategy for preventing and combating online scams requires a holistic approach that simultaneously targets improving technological security, strengthening the international legal framework, raising public digital awareness, and addressing the underlying social and economic issues that create fertile ground for these crimes. Only through a comprehensive understanding of this causal network can we hope to build a safer digital society.

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THE LEGAL PROFESSION BETWEEN SAFEGUARDING THE FREEDOM OF DEFENSE AND UNLAWFUL INTERFERENCE: LEGISLATIVE AND INSTITUTIONAL PERSPECTIVES IN THE REPUBLIC OF MOLDOVA

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Abstract:

The legal profession represents a fundamental component of the justice system and serves as a vital guarantee for the effective exercise of the right to defense in criminal proceedings. In a state governed by the rule of law, lawyers must be able to perform their professional duties freely, independently, and without undue pressure or fear. Nevertheless, in the Republic of Moldova, challenges related to institutional pressure, unlawful interference by prosecutorial bodies, and the absence of clear guarantees for the protection of lawyers remain pressing and problematic.

On May 14, 2025, the Republic of Moldova signed the Council of Europe Convention on the Protection of the Profession of Lawyer during the meeting of foreign affairs ministers of the Council of Europe member states, held in Luxembourg.

This instrument establishes specific and positive obligations for signatory states to ensure the effective protection of lawyers against any form of harassment, intimidation, or reprisal. It also guarantees the inviolability of lawyer-client confidentiality, access to case materials, freedom of expression in the course of professional activity, and professional independence. The Convention not only sets out binding legal standards and a monitoring mechanism aimed at strengthening the independence and integrity of the legal profession but also contributes to improving individuals' effective access to justice.

Thus, by ensuring the effective protection of lawyers' professional rights, the Convention also promotes the protection of the rights of their clients, thereby reinforcing the rule of law within the jurisdictions of the signatory states.

The criminal law dimension of protecting the status and role of the lawyer in the Republic of Moldova is explicitly enshrined in Article 303¹ of the Criminal Code, a provision introduced to enhance safeguards for professional independence and to prevent unjustified interference in the exercise of legal mandates. According to this article, any form of unauthorized interference in the activity of a lawyer or trainee lawyer, when intended to obstruct the defense or representation of a client, constitutes a criminal offense.

The offense is considered aggravated when committed by an individual abusing their official position.

Keywords: lawyer, right to defense, professional independence, interference, criminal liability.

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Introduction

In any democratic state, the legal profession is not limited to the provision of specialized legal services; it constitutes a fundamental component of the justice system and the protection of fundamental human rights. By the very nature of their duties, lawyers are indispensable actors in ensuring a fair trial, guarantors of equality of arms before the law, and essential intermediaries between the citizen and the state.

A lawyer is not merely a service provider but a safeguard of citizens' fundamental rights—particularly the right to defense—as enshrined in article 26 of the Constitution of the Republic of Moldova (Constitution of the Republic of Moldova, 1994) and in international human rights instruments such as Article 6 of the European Convention on Human Rights.

In order for this constitutional and social role to be fulfilled genuinely and effectively, certain minimum conditions for the practice of the profession must be guaranteed. These include professional freedom, independence from authorities, confidentiality of the lawyer-client relationship, and protection against any form of pressure, interference, or retaliation. These guarantees are not privileges granted to lawyers; rather, they are essential preconditions for the free, fair, and competent exercise of the right to defense.

In this context, on 14 May 2025, the Republic of Moldova signed the Council of Europe Convention on the Protection of the Profession of Lawyer (Council of Europe Convention on the Protection of the Profession of Lawyer, 2025). This act symbolizes not only the state's commitment to European standards regarding the independence and protection of lawyers but also the recognition of existing systemic vulnerabilities that require urgent legislative and institutional interventions.

However, despite such international commitments, the legal profession in the Republic of Moldova continues to face significant challenges. In the absence of effective institutional mechanisms for the protection of lawyers and a coherent and robust legislative framework to uphold the profession, interference risks becoming a tolerated practice—undermining public trust in the justice system. This is not merely a professional issue but a structural one, as it concerns the legal system's capacity to guarantee fundamental rights and operate in accordance with the principles of the rule of law.

This article aims to analyze, from a legal and institutional perspective, how the fundamental principles governing the practice of the legal profession are respected and protected in the Republic of Moldova. Particular emphasis will be placed on the current normative framework, the systemic risks of unlawful interference, and the potential for strengthening professional independence in light of European jurisprudence and international best practices.

1. Principles governing the legal profession

The practice of law, as provided in Article 3 of the Statute on the Legal Profession (Union of Lawyers of the Republic of Moldova, Statute on the legal profession, 2011), is founded on a set of legal, deontological, and ethical principles that define the lawyer's professional status and ensure the lawful and responsible performance of legal services. These principles guarantee a professional practice that meets the demands of the rule of law and align with the lawyer's constitutional mission to secure the right to defence.

The normative framework regulating the legal profession rests on the following fundamental principles:

Legality – the cornerstone of every legal activity, including the practice of law. It requires strict observance of all applicable substantive and procedural rules. A lawyer must actively contribute to upholding legality and strengthening the rule of law.

Freedom to exercise the profession – reflects the lawyer's autonomy in dealings with clients, courts, and public authorities. This freedom is regulated and conditioned by compliance with ethical rules and by responsibility toward the public interest and the core values of justice.

Professional independence – essential for legal practice. Independence covers both freedom from external influences (political, economic, or administrative) and the lawyer's ability to act according to professional conviction, in the client's legitimate interest and in conformity with the law.

Humanism – underscores the ethical and social dimension of the profession. A lawyer is not merely a legal technician but a social actor called to defend human dignity, advance the values of justice, and safeguard fundamental rights.

Confidentiality – a defining element of the lawyer–client relationship, protected by professional secrecy. It is absolute and unlimited in time, guaranteeing the trust necessary for professional interaction. Confidentiality precludes disclosure of any information obtained in the course of the mandate without the client's explicit consent.

Guarantee of the right to defence – enshrined in Article 26 of the Constitution of the Republic of Moldova, it is one of the lawyer's paramount duties. Legal practice contributes to the administration of justice, balances the positions of procedural parties, and upholds the principles of a fair trial, as recognised in Article 6 of the European Convention on Human Rights.

Democratism and collegiality – govern relations among lawyers and within the profession. Democratism is reflected in the profession's self-governing organisation, while collegiality entails professional solidarity, mutual respect, and loyal cooperation among members of the bar.

Voluntary membership in professional associations – emphasises the free and democratic character of internal professional organisation. Lawyers may, but are not obliged to, join associations to promote legitimate interests, pursue continuing professional development, and protect their professional status.

These fundamental principles may be subject to challenges. Interference with the exercise of the legal profession can take various forms, such as unjustified surveillance, interception of confidential communications between lawyer and client, restriction of access to case materials, or, in more serious situations, intimidation of the lawyer through the initiation of abusive disciplinary or criminal proceedings (Union of Lawyers of the Republic of Moldova, 2025).

In the absence of robust institutional safeguards—such as effective and independent mechanisms to protect lawyers from abuse or firm sanctions against authorities responsible for such interference—these practices may lead to the erosion of professional independence and to a growing sense of vulnerability within the legal profession. Such a situation does not affect only the individual lawyer, but also has direct implications for the right to defence and, by extension, the administration of justice as a whole.

It is therefore evident that in the Republic of Moldova, the legal profession stands at the intersection of rule-of-law principles and the realities of a judiciary in transition. Without effective protection for lawyers and a strengthening of their functional independence, any justice reform risks remaining incomplete. Moreover, achieving the goal of alignment with European standards in the field of justice requires not only targeted legislative reforms but also a profound transformation of institutional culture and of the relationship between lawyers, the judiciary, the prosecution, and investigative authorities.

2. International context: signing of the Council of Europe Convention

On May 14, 2025, the Republic of Moldova took a significant step in its integration into the European legal space by signing the Council of Europe Convention on the Protection of the Profession of Lawyer (Council of Europe Convention on the Protection of the Profession of Lawyer, 2025). The event took place during the meeting of the Ministers of Foreign Affairs of the Council of Europe member states, held in Luxembourg, and marks a milestone in strengthening institutional safeguards regarding the practice of law.

The Convention establishes a mechanism for the periodic monitoring of its implementation, aimed at ensuring the effective observance of standards for the protection of the legal profession in the member states (Council of Bars and Law Societies of Europe, Explanatory Note, Council of Europe Convention on the Protection of the Legal Profession, 2025). This

mechanism is carried out by the Group of Experts on the Protection of Lawyers (GRAVO) — an independent body tasked with oversight and evaluation, composed of highly qualified professionals appointed by the Committee of the Parties to the Convention.

GRAVO is mandated to review periodic reports, issue recommendations to member states, and publish thematic observations on good practices or shortcomings in the implementation of the Convention. Through its apolitical and technical nature, the group seeks to maintain a balance between state sovereignty and the imperative of upholding international standards on the independence and safety of lawyers.

The mechanism represents an important institutional innovation within the European legal framework, contributing to enhanced state accountability and to the consistent and objective monitoring of the situation of lawyers in a transparent and participatory setting. By adopting this instrument, the Council of Europe responds to increasingly frequent challenges to the independence of the legal profession, including unjustified interference, political pressure, or reprisals against those who defend fundamental rights and freedoms.

Thus, the Convention sets out a clear legal framework for protecting lawyers, ensuring optimal conditions for the exercise of their profession in an environment of safety, independence, and respect for the rule of law.

One of the most sensitive issues addressed by the Convention is the guarantee of the inviolability of lawyer-client confidentiality. The relationship between a lawyer and their client is fundamentally based on mutual trust, which cannot exist in the absence of strong guarantees regarding the confidentiality of their communications. Confidentiality is not a privilege granted to the lawyer but a fundamental right of the client, recognized and protected by both international and national norms. It is an integral part of the right to defence and the right to a fair trial.

At the international level, this guarantee is enshrined in Article 6 of the European Convention on Human Rights (European Convention on Human Rights, 1950), which establishes the right to a fair trial. In the case-law of the European Court of Human Rights, the confidentiality of the lawyer-client relationship has been reaffirmed as an essential element in the effective exercise of the right to defence. Any unjustified interference by authorities in this relationship — such as the interception of communications, searches, or the use of information obtained abusively — is considered a serious breach of fair trial standards.

In the context of the new Council of Europe Convention on the Protection of the Profession of Lawyer, this obligation becomes legally binding for signatory states, including the Republic of Moldova. The

Convention explicitly requires states to adopt effective measures to prevent, sanction, and remedy any violation of lawyer-client confidentiality, whether committed by public authorities or other actors.

At the national level, the protection of this principle is regulated by the Law on the legal profession (Law on the legal profession, 2002), which stipulates that lawyers are obliged to maintain the confidentiality of all information obtained in the exercise of their profession. The disclosure of such information constitutes a disciplinary offense and may result in criminal or civil liability. Nevertheless, the application of these provisions occasionally raises issues of interpretation and implementation, particularly concerning searches of lawyers' offices, interceptions, or access by investigative authorities to professional correspondence.

In the case of *Mancevschi v. Moldova* the European Court of Human Rights held that “(...) the applicant was neither suspected nor accused of committing any crimes or illegal activities. On the other hand, his office contained files belonging to his clients. Taking into account that the search took place at the office where the applicant practiced as a lawyer, a fact that could have implications for the principle of confidentiality in lawyer-client relationships, the Court expected the investigating judge to provide convincing and detailed reasons for authorizing this measure, as well as to prescribe special measures to protect materials covered by professional secrecy. Moreover, before being removed from the file by the investigating officer, the applicant had represented a party in the criminal case in relation to which the search was authorized. Thus, the search could have led to the discovery of objects and documents obtained by the applicant in his capacity as a representative of the accused, which clearly could have had serious repercussions on the rights of the accused guaranteed by Article 6 of the Convention. For this reason, more stringent precautionary measures should have been taken before authorizing the search of the applicant's office and home. However, the investigating judge did not address any of these issues in his decisions dated 26 May 2004. Under these circumstances, and especially given the general wording of the authorizations for the searches and the absence of any special protective measures regarding the confidentiality of lawyer-client relations, the Court finds that the national authorities did not provide “relevant and sufficient” reasons for authorizing the searches. Therefore, there has been a violation of Article 8 of the Convention.” (*Mancevschi v. Moldova*, 2008, § 49-50).

The European Court of Human Rights (ECtHR) also emphasized in cases such as *Michaud v. France* (2012) and *Campbell v. United Kingdom* (1992) that the protection of lawyer-client confidentiality is not absolute, but any limitation must be proportionate, justified, and strictly necessary in a

democratic society. Furthermore, state authorities have a positive obligation to establish and maintain a normative and institutional framework that ensures respect for this principle.

In the *Michaud v. France* case, the Court examined whether “(...) the obligation imposed on lawyers to report their clients’ suspicious transactions complies with the right to respect for private life concerning the protection of lawyers’ professional privilege. The European Court observed that lawyers were required to report suspicious transactions only in two circumstances: when, in the course of their business activities, they participated for and on behalf of their clients in financial or real estate transactions or acted as agents; and when assisting clients in preparing or carrying out transactions concerning certain defined operations (e.g., the purchase and sale of real estate or businesses; management of funds, securities or other assets belonging to the client, etc.). Moreover, the Court noted that the legislation exempted lawyers from reporting suspicious transactions when such transactions related to judicial proceedings. The Court found no disproportionate interference with lawyers’ professional privilege, as the obligation to report suspicious transactions was not directed against the essence of the lawyer’s role as a defender” (*Michaud v. France*, 2012, § 127-128).

In this regard, harmonizing national legislation with the standards imposed by the new international convention becomes not merely a formal obligation but an essential condition for the effective functioning of the rule of law. It is necessary to revise the legal framework to strengthen procedural guarantees, ensure the professional independence of lawyers, and strictly limit the circumstances under which exceptions to the principle of confidentiality may occur, subject to rigorous judicial oversight.

Guaranteeing the inviolability of lawyer-client confidentiality is not only a legal imperative but also a moral one, reflecting the state’s commitment to human dignity, fundamental rights, and the democratic functioning of institutions. In a functioning judicial system, a lawyer must be able to assist the client without fear that the information disclosed may be used against them, and the state has the responsibility to protect this relationship through clear, effective legislative, administrative, and institutional measures that comply with European standards.

According to the Law on the Prevention and Combating of Money Laundering and Terrorism Financing (Law on the Prevention and Combating of Money Laundering and Terrorism Financing, 2017, art. 4), lawyers are among the reporting entities “when they provide assistance in the preparation or execution of transactions for their clients relating to the purchase or sale of real estate, shares or social parts, or elements of a

business, the management of financial instruments, securities, or other client assets; operations or transactions involving sums of money or transfer of ownership; the establishment or management of bank accounts, savings accounts, or securities accounts; the organization of the subscription process for contributions necessary for the establishment, operation, or management of a company; the establishment, management, or leadership of such companies, collective investment undertakings in securities, or other similar structures; as well as when they participate, on behalf of or for their clients, in any financial transaction or involving real estate; the creation, operation, or management of trusts, companies, foundations, or similar structures.”

Lawyers are required to apply standard customer due diligence measures in all cases stipulated in Article 5 of the mentioned law, specifically: “when initiating business relationships; when conducting any type of occasional transactions (exceeding 20,000 lei if conducted through a single operation via payment service providers, including electronic means; exceeding 200,000 lei if conducted through one or more related operations, considering national requirements); for gambling organizers, at the moment of payout of winnings, purchase or exchange of chips, or placing bets involving transactions worth at least 40,000 lei, whether conducted in a single operation or multiple related operations; when there is suspicion of money laundering or terrorist financing, regardless of any exemptions, waivers, or thresholds; when there are doubts concerning the authenticity, sufficiency, and accuracy of previously obtained identification data; and in the case of persons trading goods, when making occasional cash transactions of at least 200,000 lei, whether conducted through a single operation or multiple related operations.”

Freedom of expression constitutes one of the fundamental pillars of a democratic society and is expressly protected by Article 10 of the European Convention on Human Rights (ECHR, 1950). Regarding the legal profession, this freedom acquires a specific and essential dimension, as it ensures lawyers the ability to speak freely on behalf of their clients, to criticize prosecutorial and criminal justice authorities, or to report abuses without fear of persecution or disproportionate disciplinary sanctions.

In exercising their duties, a lawyer is not merely a representative of their client but also a guarantor of the protection of fundamental human rights, including the right to a fair trial and effective access to justice. In this sense, a lawyer’s freedom of expression within the professional sphere — before courts, during judicial proceedings, in relations with prosecutors and investigative authorities, as well as publicly when discussing matters of public interest related to justice — is an indispensable tool for the effective defense of the client.

The European Court of Human Rights has consistently reiterated in its jurisprudence that lawyers benefit from enhanced protection of freedom of expression due to their social function. In *Morice v. France*, the Grand Chamber concluded that although “a lawyer cannot be equated with a journalist” and thus does not enjoy the same freedom of expression, in this case, lawyer Olivier Morice expressed value judgments based on a “sufficient factual basis” and raised issues of public interest concerning dysfunctions in the justice system. In this context, his remarks did not exceed the limits of the right guaranteed by Article 10 on freedom of expression (*Morice v. France*, 2015).

The Court further clarified that a lawyer “is not an external witness responsible for informing the public,” but is directly involved in the functioning of justice and the defense of the client. It also emphasized that “it is necessary to preserve the authority of the judiciary and ensure mutual respect between judges and lawyers.” Essentially, the Court underlined that lawyers must be able to draw attention to dysfunctions in the judicial system without being automatically exposed to sanctions, provided their expressions remain within the bounds of decency and proportionality.

Similarly, in *Nikula v. Finland*, the Court held that verbal interventions by a lawyer in a criminal trial, even if critical of the prosecutor, deserve special protection as they contribute to the proper and thorough debate of the case (*Nikula v. Finland*, 2002).

In this context, the Council of Europe Convention on the Protection of the Profession of Lawyer (Council of Europe Convention on the Protection of the Profession of Lawyer, 2025) innovatively introduces positive obligations for states to ensure and guarantee lawyers’ freedom of expression in the exercise of their functions. These obligations go beyond prohibiting censorship or reprisals; they require the creation of an institutional framework that prevents abuses, permits professional opinions to be expressed, and sanctions authorities that attempt to silence critical voices among lawyers.

For the Republic of Moldova, implementing these standards implies revising existing disciplinary mechanisms to prevent their arbitrary use against inconvenient or critical lawyers. At the same time, professional and ethical culture within the legal profession must be strengthened by recognizing lawyers as “actors of justice” rather than mere providers of legal services. Protecting their freedom of expression implicitly means protecting the public interest in transparent and fair justice.

Another essential aspect is the freedom of lawyers to express themselves in the public sphere, including participation in debates on the functioning of the justice system, criticism of public policies in the legal

field, or the defense of the profession's independence. Any attempt to restrict this dimension—whether through institutional pressure, media stigmatization, or judicial harassment—must be firmly sanctioned, as it constitutes a threat to democracy.

Access to case materials is a fundamental condition for the effective exercise of the right to defense, guaranteed by Article 6 of the European Convention on Human Rights (ECHR, 1950) and other relevant international instruments. Without access to the case file, a lawyer cannot assess evidence, build a defense strategy, or challenge accusations in a meaningful and effective manner. Thus, the absence or restriction of such access directly affects procedural balance and compromises the principle of equality of arms between prosecution and defense.

According to the jurisprudence of the European Court of Human Rights, access to case materials is an integral component of the right to a fair trial. In *Foucher v. France*, the Court found that restricting access to the file during the early stages of criminal proceedings violated the applicant's right to defense (*Foucher v. France*, 1997).

Member States of the Council of Europe have a positive obligation not only to permit formal access to the file but also to ensure real, prompt, and complete access, enabling the lawyer to effectively perform their role as defense counsel.

The new international convention, signed by the Republic of Moldova on May 14, 2025, reaffirms the importance of this fundamental procedural right. Specifically, the convention obliges States to guarantee that lawyers have access to all relevant materials in the case file at every stage of the proceedings—from criminal investigation to appeal or cassation phases. The document also expressly prohibits any arbitrary or disproportionate restriction of such access, including on grounds of state secrecy or public order protection, without strict legal justification and effective judicial review.

The legal profession is indispensable to the functioning of justice and the protection of citizens' fundamental rights. For lawyers to freely and effectively fulfill their role, it is essential that they be protected against any form of intimidation, pressure, harassment, or retaliation related to their professional activity. Such practices—whether originating from public authorities, political actors, private entities, or even courts—gravely undermine the independence of the profession and strike at the very core of the rule of law.

International standards clearly affirm the necessity of protecting lawyers against any form of unjustified interference. According to the United Nations Basic Principles on the Role of Lawyers (United Nations,

Basic Principles on the Role of Lawyers, 1990, § 16), lawyers must be able to perform all professional functions “without intimidation, hindrance, harassment or improper interference; they shall be able to travel and consult with their clients freely both within their own country and abroad; they shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties and standards, and applicable ethical codes.”

The same principle is reiterated by the Council of Europe Convention on the Protection of the Profession of Lawyer (Council of Europe, Convention on the Protection of the Profession of Lawyer, 2025), which imposes positive obligations on States to prevent and sanction any form of: physical or psychological intimidation of lawyers; administrative harassment (including abusive criminal prosecution or excessive inspections); direct or indirect threats aimed at discouraging lawyers from representing their clients; reprisals such as the withdrawal of practice licenses, negative public exposure, or professional discrimination.

In practice, many lawyers defending sensitive cases—especially involving corruption, minority rights, or political opponents—face real risks of arbitrary license revocation, media smear campaigns, or even physical threats. Such practices not only endanger the personal safety of lawyers but also produce a chilling effect on the entire profession: self-censorship and reluctance to take on difficult cases, thereby degrading access to effective defense for vulnerable individuals.

To prevent these phenomena, the Council of Europe Convention requires signatory States to adopt clear legislative, administrative, and institutional measures. These include: establishing explicit legal frameworks to sanction intimidation or reprisals against lawyers; guaranteeing effective mechanisms for reporting and investigating professional harassment cases; ensuring the independence of lawyers’ professional bodies so they can defend their members against external pressures; and providing personal protection measures for lawyers at risk, especially in sensitive or high public interest cases.

The adoption of the Convention obliges Moldovan authorities to develop a prevention system combining the creation of an independent protection mechanism for lawyers; training police officers, prosecutors, and judges on the role of lawyers in a rule-of-law state; and close cooperation with the Bar Association and international organizations to foster a legal culture grounded in respect for professional independence and fundamental human rights.

At the national level, the legislative response to the need to protect the status of lawyers materialized in the introduction of Article 303¹ into the

Criminal Code of the Republic of Moldova (Criminal Code of the Republic of Moldova, 2002). This provision criminalizes any unauthorized interference with the activities of lawyers or trainee lawyers when such interference aims to obstruct the exercise of defense or client representation duties.

The legal text also includes an aggravated form when the interference is committed through the abuse of an official position, reflecting the gravity and negative impact of such acts on the exercise of the lawyer's activities.

The adoption of this article represents an official acknowledgment of the risks faced by the profession and constitutes a necessary but insufficient measure without a coherent institutional framework and effective implementation mechanisms.

Institutional reform must target not only the strengthening of legal guarantees but also the transformation of mindsets among justice system actors. Genuine cooperation between bar associations, judicial authorities, and civil society is essential to create an environment conducive to the free and responsible exercise of the profession.

Conclusions

Preventing any form of intimidation, harassment, threats, or reprisals against lawyers must not be viewed merely as a matter of professional protection, but rather as a structural element of the rule of law and the proper functioning of the justice system. A lawyer who lacks freedom and security in the exercise of their profession is unable to provide effective legal defense, and a client deprived of defense is, in both legal and moral terms, a citizen deprived of rights. Therefore, legal and institutional guarantees for the protection of lawyers must be clear, effective, and enforceable—not merely declarative.

States have a positive obligation to ensure an environment in which lawyers can perform their duties in accordance with international standards, as set forth by the European Convention on Human Rights, the United Nations Basic Principles on the Role of Lawyers, and, more recently, the Council of Europe Convention on the Protection of the Profession of Lawyer.

Protecting lawyers is not a privilege—it is a safeguard of democracy. The lawyer plays a dual role: defending the individual interests of the client and, at the same time, contributing to the maintenance of the balance between the citizen and the state. Strengthening the professional independence of lawyers thus has direct implications for the protection of human rights, the principle of equality of arms, and the transparency of the administration of justice. The Republic of Moldova's signing of the Council of Europe Convention and the adoption of Article 303¹ of the Criminal

Code, which criminalizes obstruction of a lawyer's professional activity, are significant steps toward alignment with European standards.

However, the effectiveness of these instruments fundamentally depends on the existence of institutional implementation mechanisms, the independence of professional bodies, and a genuine and consistent political will. In the absence of these elements, there is a considerable risk that such measures will remain purely formal.

In this context, the strengthening of protections for lawyers must become a strategic priority within the broader process of justice reform in the Republic of Moldova. Indeed, the freedom and safety of the legal profession are not only indicators of a well-functioning justice system, but also barometers of a state's democratic health. To the extent that the Republic of Moldova seriously upholds its international commitments and implements effective protection mechanisms, it will not only reinforce the legal profession but also strengthen public confidence in the justice system and in state institutions.

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REVOCATION OF THE COOPERATION AGREEMENT IN LIGHT OF THE NEW AMENDMENTS TO THE CRIMINAL PROCEDURE CODE OF THE REPUBLIC OF MOLDOVA

Iulia Ghetivu¹

Abstract:

The cooperation agreement procedure, regulated in Title III, Chapter III, Section 2 of the Criminal Procedure Code of the Republic of Moldova, represents a special form of criminal proceedings, applicable to certain categories of offenses under the jurisdiction of specialized prosecution offices, with some exceptions.

Under the agreement, the accused admits guilt and actively cooperates with the criminal investigation body, particularly by providing relevant information for the identification and prosecution of other individuals. In exchange, they benefit from a reduced sentence and a more favorable form of execution.

The procedural law establishes strict conditions for the initiation, conclusion, execution, and revocation of the agreement. Thus, the chief prosecutor of the specialized prosecution office may unilaterally revoke the agreement before the case is sent to court, by issuing a reasoned Revocation Order, which must be approved in writing by the Prosecutor General.

Revocation may occur under the following circumstances: the accused fails to fulfill the conditions set out in the agreement; the accused knowingly provides false or incomplete information regarding the facts described in the agreement; the information provided by the accused is not confirmed during the investigation; or the accused commits a serious, particularly serious, or exceptionally serious crime after signing the agreement.

Additionally, the essential role of the defense attorney is highlighted throughout the procedure, starting from the initiation of the agreement, especially by explaining its content to the accused, the consequences of non-compliance after the sentencing, and the circumstances that may lead to revocation.

Therefore, the study of the revocation of the cooperation agreement aims to analyze the legal premises for revocation, particularly the legal grounds and conditions, the contestation of the Revocation Order, and the roles of the defense attorney, the prosecutor, and the Prosecutor General.

Keywords: *cooperation agreement, accused, defense attorney, Prosecutor General, revocation of the agreement, cancellation of the agreement.*

Introduction

The legislator has established strict conditions for the conclusion and execution of the cooperation agreement, as well as regulated the procedure and legal grounds for its revocation.

Thus, the agreement may be revoked, at the prosecutor's proposal, by the chief prosecutor of the specialized prosecution office, prior to the referral of the criminal case to the court. In this regard, it is stipulated that, in the event of a decision to revoke the agreement, the chief prosecutor of

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the specialized prosecution office is required to issue a reasoned Order of Revocation of the cooperation agreement.

Furthermore, the Prosecutor General plays an important role in the revocation process, as he must provide written approval of the revocation order issued by the chief prosecutor of the specialized prosecution office.

The legal grounds on which a cooperation agreement may be revoked are: a) the accused has failed to fulfill the conditions accepted and established in the agreement; b) the accused has knowingly provided false or incomplete information regarding the facts described in the agreement; c) the information provided by the accused was not confirmed during the criminal investigation; d) the accused committed a serious, particularly serious, or exceptionally serious offense after signing the cooperation agreement.

The defense attorney plays a key role in the conclusion of the agreement, by explaining to the accused the conditions of cooperation they are committing to, the consequences of non-compliance with these obligations, the circumstances under which the prosecutor may revoke the agreement, and the actions to be undertaken as part of the cooperation process.

1. General Aspects of the Cooperation Agreement in Criminal Proceedings under the legislation of the Republic of Moldova

The cooperation agreement in criminal proceedings represents a special procedure for criminal investigation and adjudication, recently introduced by the legislator through Law No. 245/2023 (Law on the amending several normative acts, including the Criminal Procedure Code and the Contravention Code, 2023)

The Moldovan legislator regulated the cooperation agreement under Title III – Special Procedures, Chapter III, Section 2 of the Criminal Procedure Code (Criminal Procedure Code of the Republic of Moldova, 2003).

The purpose of the cooperation agreement procedure is to facilitate the examination of criminal cases within a shorter time frame, to enable the discovery of specific categories of offenses, to ensure efficient administration of evidence, to provide additional alternatives for accused persons in resolving criminal cases, and, implicitly, to improve the overall efficiency of criminal proceedings.

The legal definition of the cooperation agreement is provided in Article 509³ paragraph (2) of the Criminal Procedure Code, which states, „the cooperation agreement is a transaction concluded, at the prosecutor’s proposal, between the chief prosecutor of the specialized prosecution office and the accused natural person who admits guilt and wishes to cooperate with the criminal investigation body by facilitating the identification and criminal liability of other individuals, in exchange for a reduced sentence

and a more favorable form of execution.” (Criminal Procedure Code of the Republic of Moldova, 2003, art. 509³ (2)).

This procedure directly targets, on the one hand, natural persons who have the procedural status of „accused” in a criminal case—i.e., against whom the prosecutor has issued an order of indictment.

On the other hand, it involves the chief prosecutor of a specialized prosecution office, specifically the Anticorruption Prosecutor’s Office and the Prosecutor’s Office for Combating Organized Crime and Special Cases, as set out in Article 9 of the Law on the Prosecution Service (Law No. 3 of 25 February 2016 on the Prosecutions Service, 2016).

It should be noted that a cooperation agreement may only be concluded in criminal cases concerning certain categories of offenses, as inferred from Article 509³ paragraph (3) of the Criminal Procedure Code, which provides that „the cooperation agreement procedure is applicable in criminal cases under the jurisdiction of specialized prosecution offices, for the purpose of identifying the offenses provided for in Articles 270¹ and 270², with the exception of minor offenses, when achieving the goals of the criminal process by other means is impossible.” (Criminal Procedure Code, of the Republic of Moldova, 2003, art. 509³ (3)).

Also cooperation agreement cannot be concluded in cases involving the offenses listed in Articles 135–144 and 166¹ of the Criminal Code, nor in cases of offenses for which the law provides a maximum penalty exceeding 15 years of imprisonment (Criminal Procedure Code of the Republic of Moldova, 2003, art. 509³ (4)).

A defining feature of this procedure lies in the fact that, by signing the cooperation agreement, the accused waives certain procedural rights, primarily the right to remain silent and the right against self-incrimination. The accused may benefit from a reduced sentence and a more favorable form of enforcement only if they admit guilt and cooperate with the criminal investigation body by facilitating the identification and criminal liability of other persons.

2. Procedural Guarantees in the Context of Cooperation Agreements from the Perspective of the European Court of Human Rights

The European Court of Human Rights (ECHR) accepts the existence of plea agreements, settlements, and negotiation practices, provided that they are accompanied by effective and robust procedural safeguards. These include legal counsel for the accused, the absence of any form of coercion or unlawful promises, judicial confirmation of consent, and verification of the factual basis of the charges, among others (Knowledge Sharing, 2025).

In the case of *Natsvlishvili and Togonidze v. Georgia* (2014, § 91) the Court held that “when the result of a negotiated agreement is that a criminal charge against the defendant is determined through a shortened form of judicial examination, this essentially implies a waiver of a number of procedural rights. This is not problematic in itself, as neither the letter nor the spirit of Article 6 prevents a person from waiving such guarantees of their own free will (...). A fundamental principle requires that a waiver of certain procedural rights must always, in order to be effective under the Convention, be established unequivocally and be accompanied by minimum safeguards commensurate with its importance. Furthermore, it must not conflict with any important public interest.” (*Natsvlishvili and Togonidze v. Georgia*, 2014).

In paragraph 92 of the same case, the Court further noted that “(...) the first applicant’s decision to accept the agreement should have been subject to the following conditions: (a) the agreement should have been accepted by the first applicant with full knowledge of the facts of the case and of the legal consequences, and in a truly voluntary manner; and (b) the content of the agreement and the fairness of the manner in which it was concluded between the parties should have been subject to adequate judicial oversight.” (*Natsvlishvili and Togonidze v. Georgia*, 2014, § 92).

The Court has also adopted the standard of “knowing and informed waiver.” In *Ibrahim and Others v. the United Kingdom* (2016, § 272), the Court stated: “The Convention is intended to guarantee rights that are practical and effective, not theoretical or illusory (...). To ensure that the protection afforded by the right to a lawyer, the right to remain silent, and the right not to incriminate oneself is practical and effective, it is essential that suspects are made aware of these rights. This follows implicitly from the Court’s application of the ‘knowing and informed waiver’ standard in cases where a waiver of the right to legal assistance is alleged (...).” Consequently, the Court held that “it is inherent in the right not to incriminate oneself, the right to remain silent, and the right to legal counsel, that a person ‘charged with a criminal offence’ within the meaning of Article 6 has the right to be informed of these rights.” (*Ibrahim and Others v. the United Kingdom*, 2016).

In the case of *Navalnyy and Ofitserov v. Russia* (2016, § 100), the Court noted that, with regard to plea bargaining, it had previously found that such procedures are “a common feature of European criminal justice systems, allowing a defendant to obtain a more favorable legal classification or a reduced sentence in exchange for a guilty plea or a nolo contendere declaration, prior to trial or in return for substantial cooperation with the prosecution.” When the result of plea bargaining is that a criminal charge

against the accused is resolved through an expedited form of judicial examination, this essentially entails a waiver of certain procedural rights. For such a waiver to be valid under the Convention, it must be established unequivocally, be accompanied by minimum safeguards proportionate to its significance, and must not conflict with any important public interest (*Navalnyy and Ofitserov v. Russia*, 2016).

In *Miranda v. Arizona*, it was held that a suspect's waiver of their rights constitutes an exception and is valid only if made voluntarily, knowingly, and intelligently. It must be demonstrated that the statements given by the suspect in the absence of legal counsel were made with full awareness and understanding (Havens, 2021, p. 335).

Furthermore, the burden of proof lies with the prosecution to demonstrate that the suspect's waiver of procedural rights was made fairly and with full knowledge of the consequences.

In line with the "knowing and informed waiver" standard, the European Court of Human Rights has established that any waiver must: - be unequivocally established; - be accompanied by minimum safeguards proportionate to its significance; - be voluntary; - be based on an informed choice; - be clear, in the sense that the individual must be able to reasonably foresee the consequences of their conduct; - and must not conflict with any important public interest." (Knowledge Sharing, 2025).

3. Conditions and legal grounds for the revocation of the Cooperation Agreement

When a cooperation agreement is concluded, the accused assumes several obligations, which are reflected in the content of the agreement. These include: the specific conditions of cooperation undertaken by the accused; the statements the accused commits to making in court to facilitate the criminal liability of other individuals who have committed offenses; the circumstances under which the cooperation agreement may be revoked by the prosecutor; and the consequences of non-compliance with the agreement following the delivery of a conviction.

If, after signing the cooperation agreement, the accused fails to fulfill the obligations undertaken, this gives the prosecutor the right to unilaterally revoke the agreement, provided that specific legal conditions are met.

Thus, the cooperation agreement may be revoked, at the prosecutor's proposal, by the chief prosecutor of the specialized prosecution office, through the issuance of a reasoned order, with the written approval of the Prosecutor General, provided that this occurs prior to the referral of the case to the court under the special procedure. This rationale derives from the

provisions of Article 509⁶ paragraph (1) of the Criminal Procedure Code (Criminal Procedure Code of the Republic of Moldova, 2003, art. 509⁶ (1)).

The circumstances under which the cooperation agreement may be revoked by the prosecutor must be explicitly included in the text of the agreement itself, as they represent a mandatory element of its content, in accordance with Article 509⁵ point 4) of the Criminal Procedure Code.

Clear and accessible communication with the accused regarding the content of the cooperation agreement, as well as the mandatory presence of the defense attorney during the conclusion of the agreement, constitutes a procedural safeguard ensuring transparency and certainty regarding the grounds for revocation.

Therefore, the cooperation agreement must explicitly outline the specific situations in which revocation may occur, such as failure to fulfill the undertaken obligations, providing false or incomplete information, etc., after signing the agreement. Specifying these circumstances in the agreement serves to prevent ambiguity and to protect the rights of the accused, offering a clear understanding of the conditions under which the cooperation may be terminated before the agreement is submitted to the court for confirmation.

Furthermore, during the conclusion of the cooperation agreement, the defense attorney plays a crucial role, with their participation being mandatory in this procedure. The presence of the defense attorney is essential to ensure that the rights of the accused are protected and that the accused fully understands the implications of the agreement being signed.

The role of the defense attorney includes, among others:

- protecting the rights of the accused by informing them about the conditions and content of the agreement, and verifying that the accused was informed about their procedural rights;
- ensuring the legality of the agreement, as the attorney's presence guarantees that the agreement is signed in strict accordance with the law;
- providing legal assistance by advising the accused throughout the negotiation of the cooperation agreement, explaining its implications, benefits, and risks;
- preventing potential abuses.

The participation of the defense attorney functions as a vital control mechanism, preventing abuses in the agreement signing process and ensuring that the accused is not coerced or unduly influenced into cooperating with the prosecution or self-incriminating, among others.

Thus, the following conditions must be met for the revocation of a concluded cooperation agreement to comply with legal provisions:

- the initiative to revoke the agreement must originate from the prosecutor who directs or directly conducts the criminal investigation;
- the revocation must be carried out by the Chief Prosecutor of the specialized prosecution office (Anti-Corruption Prosecutor's Office or the Prosecutor's Office for Combating Organized Crime and Special Cases);
- the revocation must be executed through the issuance of a reasoned order by the Chief Prosecutor of the specialized prosecution office;
- the revocation order must be approved in writing by the Prosecutor General;
- revocation is only possible before the case is submitted to the court for confirmation of the cooperation agreement, concluded between the accused and the Chief Prosecutor of the specialized prosecution office.

Article 509⁶ paragraph (1) of the Criminal Procedure Code sets forth the grounds for revoking the cooperation agreement, as follows: a) the accused failed to fulfill the conditions accepted and established in the cooperation agreement; b) the accused knowingly provided false or incomplete information regarding the facts described in the agreement; c) the information provided by the accused was not confirmed during the criminal investigation; d) the accused committed a serious, particularly serious, or exceptionally serious offense after signing the cooperation agreement (Criminal Procedure Code of the Republic of Moldova, 2003, art. 509⁶(1)).

Regarding the first ground for revoking the cooperation agreement—*the failure of the defendant to fulfill the conditions accepted and established in the agreement*—it is important to underline that, according to Article 509⁵ of the Criminal Procedure Code, the inclusion of the cooperation terms undertaken by the defendant constitutes a mandatory component of the agreement's content and determines its legal validity. (Criminal Procedure Code of the Republic of Moldova, 2003, art. 509⁵).

From the legal definition of the agreement, we can infer that it is concluded with a physical person (the defendant) who admits guilt and is willing to cooperate with the criminal investigation body by facilitating the identification and prosecution of other individuals.

Consequently, the cooperation conditions should refer to a series of actions to be taken by the defendant in order to assist the investigative authority in identifying and holding other persons criminally liable. However, we observe that the legislator has not explicitly defined what these conditions are, thus granting a certain margin of discretion to the head prosecutor of the specialized prosecution office when establishing them.

We conclude that, in the absence of an express regulation, the specific cooperation conditions are determined by the prosecutor and are subsequently accepted explicitly by the defendant through the signing of the agreement, in the presence of legal counsel.

This normative flexibility allows the agreement to be tailored to the specific circumstances of the case and the evidentiary value of the information provided. At the same time, it requires increased diligence in drafting and documenting the fulfillment of these conditions, since failure to meet them may justify the revocation of the agreement prior to the case being submitted to court, pursuant to Article 509⁶(1) of the Criminal Procedure Code.

As for the second ground for revocation—*the defendant knowingly providing false or incomplete information regarding the facts described in the agreement*—we emphasize that this aspect is directly related to the content of the cooperation agreement, as set out in Article 509⁵ of the Criminal Procedure Code.

Considering the nature of the commitment assumed by the defendant within this special procedural mechanism, the truthfulness, completeness, and utility of the information provided are essential for maintaining the validity of the agreement and for benefiting from the reduction in criminal punishment.

Furthermore, by definition, the role of the defendant in concluding the agreement is to cooperate with the investigative body by facilitating the identification and prosecution of other persons, in exchange for a reduced sentence and a mitigated form of punishment execution.

In this context, Article 80¹(2) of the Criminal Code of the Republic of Moldova¹ states that when a person under indictment enters into a cooperation agreement and the court accepts it, the sentencing limits set by the special part of the Criminal Code are reduced by two-fifths. When imprisonment is imposed, the court may apply conditional suspension or partial suspension of the sentence, in accordance with the law (Criminal Code of the Republic of Moldova, 2002, art. 80¹(2)).

Therefore, the intentional submission of false or distorted information undermines the purpose of the cooperation and legally and substantively justifies the revocation of the agreement, in accordance with Article 509⁶(1) of the Criminal Procedure Code, before the agreement is forwarded to the court for confirmation. (Criminal Procedure Code of the Republic of Moldova, 2003, art. 509⁶).

Another ground for revoking the cooperation agreement, provided in Article 509⁶(1)(c) of the Criminal Procedure Code, concerns the situation where *the information provided by the defendant is not confirmed during the criminal investigation* (Criminal Procedure Code of the Republic of Moldova, 2003, art. 509⁶(1)(c)).

¹ Criminal Code of the Republic of Moldova No. 985 of 18 March 2002, published in the Official Monitor No. 72 – 74 of 14 April 2009. Retrieved from https://www.legis.md/cautare/getResults?doc_id=121991&lang=ro

In this context, we consider that the information provided by the defendant primarily refers to the defendant's statements made during the evidentiary procedure of the defendant's hearing.

The defendant's statements constitute oral or written information given at the hearing concerning the circumstances that served as grounds for recognizing the defendant's procedural status, as well as other facts of the case known to the defendant.

At the same time, based on the concept and essence of the special procedure, the recognition of guilt and the defendant's willingness to cooperate with the criminal investigation authority are fundamental to the execution of the cooperation agreement.

The purpose of this cooperation is to facilitate the identification and prosecution of other persons involved in the commission of the offense, and in return, the defendant benefits from advantages such as a reduced sentence and the determination of the form of its execution.

Cooperation with the criminal investigation authority may also be realized through: providing statements regarding the committed act, identifying other participants, submitting objects, documents, and so forth.

We may conclude that the criminal investigation authority is not limited solely to the statements made by the defendant within the cooperation agreement to decide on the termination of the criminal investigation and referral of the case to court with respect to other participants. It must also secure other evidence confirming the guilt of other persons.

This entails obtaining evidence which will be used, pursuant to Article 93 of the Criminal Procedure Code, in order to: establish the existence or non-existence of the offense; identify the perpetrator; ascertain guilt; and determine other circumstances relevant for the just resolution of the case.

In this regard, Article 102 paragraph (1) of the Criminal Procedure Code applies, which stipulates that evidence cannot be based on information provided by a person who cannot disclose the source of their information. Furthermore, Article 103 paragraph (4) regulates that data provided by the defendant cannot serve as evidence if it relies on information whose source is unknown (Criminal Procedure Code of the Republic of Moldova, 2003, art. 102 (1) and 103 (4)).

We conclude that, if the defendant provides information that is not confirmed during the criminal investigation, the Chief Prosecutor of the specialized prosecution office shall issue an order revoking the cooperation agreement in accordance with the legal provisions.

This ground, on one hand, provides guarantees to the criminal investigation authority to avoid being misled by false statements from the

defendant, and on the other hand, it holds the defendant accountable for providing truthful information.

At the same time, the criminal investigation authority has a legal obligation to conduct its activity in accordance with the fundamental principles of criminal proceedings, including legality, impartiality, and truth-finding. It cannot limit the investigation solely to the information provided by the defendant within the cooperation agreement but must proceed with a full and objective administration of evidence to verify the truthfulness of the statements and establish the circumstances of the case.

Therefore, during evidence collection, the criminal investigation authority must exercise increased diligence by identifying and admitting both evidence that confirms the defendant's statements and evidence that may refute them. This requirement derives from the general purpose of the criminal investigation — to establish the truth of the matter, identify the persons who committed the offenses, and determine their guilt based on relevant, conclusive, and useful evidence.

Thus, the revocation of the agreement under these conditions ensures the integrity of the criminal process and protects the fairness of the criminal investigation, contributing to maintaining a judicial system based on truthfulness and transparency.

Another ground for revocation of the cooperation agreement, provided by Article 509⁶ paragraph (1) letter d) of the Criminal Procedure Code, is the *commission by the defendant of a serious, particularly serious, or exceptionally serious offense after the signing of the cooperation agreement* (Criminal Procedure Code of the Republic of Moldova, 2003, art. 509⁶ (1)).

According to Article 16 paragraph (1) of the Criminal Code, offenses are classified based on their nature and degree of harm into the following categories: minor, less serious, serious, particularly serious, and exceptionally serious (Criminal Code of the Republic of Moldova, 2002, art. 16 (1)).

Thus, a serious offense is considered to be an act for which the criminal law provides a maximum prison sentence of up to 12 years inclusive (Article 16 paragraph (4) of the Criminal Code); a particularly serious offense is an act for which the criminal law provides a maximum prison sentence exceeding 12 years (Article 16 paragraph (5) of the Criminal Code); and exceptionally serious offenses are intentional offenses punishable by life imprisonment (Criminal Code of the Republic of Moldova, 2002, art. 16 (4)–(5)).

The analysis of this ground allows us to highlight that the legislator did not refer to the issuance of a conviction sentence concerning the defendant's conviction for committing a serious, particularly serious, or exceptionally serious offense after signing the cooperation agreement, nor to

the initiation of criminal prosecution for committing such an offense, or the issuance of an indictment, etc. It only refers to the commission by the defendant of an offense of the indicated gravity.

We consider that, under Article 6 paragraph (2) of the European Convention on Human Rights (ECHR), Article 21 of the Constitution of the Republic of Moldova (1994), and Article 8 of the Criminal Procedure Code (Criminal Procedure Code of the Republic of Moldova, 2003), a person accused of committing an offense is presumed innocent as long as their guilt has not been established and proven in a public judicial process, where all necessary guarantees for their defense are ensured, and a final and irrevocable conviction decision has not been pronounced.

Accepting the possibility of imposing legal consequences on a person who has concluded a cooperation agreement based solely on the finding of conduct that may meet the constitutive elements of an offense, without a final court conviction, represents a serious diminution of the requirements arising from the principle of the presumption of innocence.

In a view compatible with the requirements of the rule of law and the guarantees of a fair criminal trial, only the establishment of guilt through an adversarial process before an independent and impartial court may justify the application of penal or quasi-penal legal consequences. Any deviation from this paradigm amounts to an erosion of the procedural protection of the individual and generates the risk of establishing a form of anticipatory justice, in which suspicion replaces judicial certainty.

The cooperation agreement presupposes sincere and responsible collaboration on the part of the defendant, and committing offenses of particular gravity after its signing contradicts the spirit of the agreement and the intention to grant a sentence reduction in exchange for effective cooperation.

Acts described as serious, particularly serious, or exceptionally serious offenses represent a considerable threat to social security and the rule of law, and the defendant who commits such offenses should bear criminal liability for the new offenses, which also affects the validity of the cooperation agreement.

Therefore, the revocation of the agreement following the commission of a serious, particularly serious, or exceptionally serious crime aims to restore the balance of the criminal process and to ensure that, despite prior cooperative behavior, the accused is held accountable for their actions, taking into account the social danger of the committed offenses. This measure protects public order and ensures the correct application of criminal sanctions, while also preventing any potential undermining of the criminal justice system.

Moreover, the revocation of the cooperation agreement is carried out by issuing a reasoned order by the chief prosecutor of the specialized prosecutor's office, approved in writing by the Prosecutor General, thus ensuring control over the legality of its issuance.

The reasoning of such orders is a mandatory condition for the legality of the criminal process, guaranteeing transparency and respect for the rights of the participants in the process.

The reasoning is essential to explain the legal and factual grounds that led to the revocation of the cooperation agreement, thereby ensuring the accused's right to a fair trial.

Furthermore, the reasoning of the order allows for effective judicial review of procedural acts, serving to prevent abuses and to guarantee that every measure taken within the criminal process is proportionate and properly justified.

It is emphasized that the accused may challenge the order revoking the cooperation agreement before the investigating judge within 10 days from the date the respective act was communicated to them.

This possibility to contest the revocation order ensures the respect of the procedural rights of the accused, guaranteeing access to an effective remedy against the consequences of the revocation of the cooperation agreement.

The appeal to the investigating judge represents a guarantee of a fair trial and an opportunity to verify the legality and substantiation of the decision made by the chief prosecutor of the specialized prosecutor's office, which may be subject to judicial review. In this regard, the investigating judge will assess whether the revocation of the agreement complies with the legal norms and whether the conditions provided for making such a decision have been met.

Another essential aspect of revoking the cooperation agreement is the possibility of concluding a new cooperation agreement with another participant in the commission of the crime, provided that the necessary evidence for resolving the case cannot be obtained otherwise.

A new cooperation agreement will be concluded under the initial conditions, granting the accused the same legal guarantees: the presence of a defense counsel, respect for material jurisdiction, the approval of the Prosecutor General, and the provision of benefits to the accused in the form of a more lenient sentence and negotiation of the form of execution.

It is also necessary to distinguish the situation of revocation of the cooperation agreement from the case when the cooperation agreement has been accepted by the court, but the convicted person fails to fulfill the obligations established in the cooperation agreement.

In such a case, the prosecutor may file a reasoned motion with the court requesting the annulment of the conviction based on the cooperation agreement, as a consequence of non-fulfillment of the conditions under the agreement, with the transfer of the convicted person for execution of the established sentence.

This represents, according to Article 469 paragraph (1) point 17/2 of the Code of Criminal Procedure, a matter resolved by the court during the execution of the criminal sentence (Criminal Procedure Code of the Republic of Moldova, 2003, art. 469 (1) p. 17/2).

Conclusions

The institution of the cooperation agreement represents a simplified procedure designed to streamline the criminal process through the acknowledgment of guilt and the cooperation of the accused with the criminal investigation authorities, in exchange for a more lenient criminal penalty and negotiation of the form of execution of the sentence.

This simplified procedure, in the form of a transaction subsequently approved by the court, provides a balance between the interests of justice and the procedural rights of the accused by the assumption of commitments by the accused and the granting of legal benefits in exchange for effective collaboration with the criminal investigation body.

The revocation of the cooperation agreement is regulated by strict and well-founded conditions intended to ensure the legality and fairness of the criminal process. It may occur only before the case is referred to the court and only in cases expressly provided by law: failure to fulfill the conditions accepted and established in the cooperation agreement; knowingly providing false or incomplete information regarding the facts described in the cooperation agreement; non-confirmation of the information during the criminal investigation; or the commission of a serious, particularly serious, or exceptionally serious crime after the signing of the cooperation agreement.

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THE RIGHT TO PROPERTY AND MECHANISMS FOR RECOVERY OF CRIMINAL ASSETS IN THE LEGISLATION OF THE REPUBLIC OF MOLDOVA FROM THE PERSPECTIVE OF FUNDAMENTAL RIGHTS PROTECTION AND THE EFFECTIVENESS OF COMBATING CRIME

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Abstract:

State interference with the right to property in the context of criminal proceedings represents a particularly sensitive and complex issue, as it entails the restriction of a fundamental right enshrined in both the Constitution and international treaties, including the European Convention on Human Rights. According to the jurisprudence of the European Court of Human Rights, any measure that limits the right to property such as seizures, confiscation, inquisition, asset freezing, or the imposition of criminal fines, must meet three essential criteria: it must be prescribed by law, pursue a legitimate aim, and be proportionate to that aim. Failure to satisfy these conditions may render the measure arbitrary, thereby exposing the state to liability for the violation of fundamental rights.

In the Republic of Moldova, amid an intensified campaign against organized crime and corruption, special mechanisms have been established to enable state intervention with respect to assets owned by individuals involved in criminal activity. These instruments include extended confiscation, the administration of seized assets by the Criminal Assets Recovery Agency, and other procedural measures specific to the criminal justice system. However, the implementation of such mechanisms raises serious concerns regarding their compatibility with European human rights standards.

These developments give rise to a series of practical and constitutional challenges: the risk of abuse by public authorities, the difficulty of maintaining a fair balance between the public interest and individual rights, and the pressing need to align the domestic legal framework with the standards established by the European Court of Human Rights (ECtHR).

Only by ensuring such a balance can the effective protection of the right to property in criminal proceedings be guaranteed.

Keywords: *property, criminal proceedings, criminal assets, procedural coercive measures.*

Introduction

Within the constitutional and legal framework of the Republic of Moldova, protecting public interest and combating criminal phenomena require the establishment of special legal tools enabling the state to intervene in assets acquired or used for criminal purposes.

Such legal interferences are regulated by a complex set of legal norms from the Criminal Code (Criminal Code of the Republic of Moldova 2002), the Criminal Procedure Code (Criminal Procedure Code of the Republic of Moldova, 2023), the Law on the Criminal Assets Recovery Agency (Law on

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the Criminal Assets Recovery Agency, 2017), the Government Decision approving the Regulation on the evaluation, administration, and valorization of (seized) criminal assets, and other normative acts in the Republic of Moldova.

Among these mechanisms are: special and extended confiscation of assets, administration of seized assets by the Criminal Assets Recovery Agency, criminal seizure, and other measures.

The Criminal Code of the Republic of Moldova (Criminal Procedure Code of the Republic of Moldova, 2023) provides in articles 106 and 106¹ two main forms of confiscation:

1. Special confiscation, applied to assets used in the commission of a crime, obtained from a crime, or directly or indirectly resulting from a crime. This measure is ordered by a final court decision and results in the loss of ownership rights.

2. Extended confiscation, a more advanced intervention measure, applicable when the court establishes beyond a reasonable doubt that the assets were acquired through criminal means, even if they cannot be linked to a specific crime. This may apply to assets obtained before or after the crime if there is a clear discrepancy between the person's assets and their lawful income. Specifically, if:

a) the value of assets acquired by the suspect/accused/convicted person in the five years before and, if applicable, after the offense exceeds their lawful income by more than 20 average monthly salaries as forecasted by government decision;

b) the court is convinced that the assets may derive from criminal activities. This conviction can be based on the gap between lawful income and asset value, lack of a plausible legal source, or links to organized crime (Criminal Code, 2002, art. 106¹).

1. Legal analysis of extended confiscation in Moldovan legislation

Extended confiscation is an extraordinary legal-criminal mechanism designed to combat illicit accumulation of wealth or property in the context of serious and organized crime. As described in article 106¹ of the Criminal Code (Criminal Code of the Republic of Moldova, 2002), it complements special confiscation, surpassing the principle of *nulla poena sine culpa*, as it allows the seizure of assets not directly linked to a specific crime, but presumed to be of criminal origin.

The legal norms suggest that extended confiscation can be used upon conviction for certain serious crimes, corruption, money laundering, drug trafficking, organized crime, if the court finds a substantial discrepancy between legal income and acquired assets. Unlike classic confiscation, this tool partly shifts the burden of proof: once the prosecutor shows a major

discrepancy and that the assets were acquired during a relevant timeframe, the burden shifts to the defendant to prove the legal origin of the assets.

A similar mechanism exists in the United States, where the burden partially shifts to the defendant once authorities demonstrate a significant discrepancy between assets and lawful income. This is often expressed in “*but for*” terms, so that property constitutes criminal proceeds if the offender would not have obtained or kept it but for the offense. This includes both direct and indirect proceeds and auxiliary benefits (Brun, 2021, p. 30).

In the UK, the Proceeds of Crime Act (POCA) 2002 allows criminal confiscation post-conviction and extends to assets acquired through criminal activity, especially if the court establishes a “criminal lifestyle” based on recidivism or illicit income from other offenses (Smith, 2003, p. 184).

Unlike Moldovan law, which considers a five-year window before and after the offense, UK law considers a period of at least six months.

Conceptually, extended confiscation relies on a material approach to criminal liability, aiming to restore social fairness and remove the economic benefit of crime. It reflects a legal fiction focusing on asset recovery rather than personal punishment, aligned with international standards like the UN Convention Against Corruption and EU Directives.

In Moldova, like in other countries, a key element in applying extended confiscation is ensuring the protection of fundamental rights, especially property rights (Constitution of the Republic of Moldova, 1994, art. 46; ECHR, Protocol No. 1, art. 1)

The ECHR has consistently ruled that such measures are compatible with the right to a fair trial and the principle of proportionality if there is a clear legal framework, possibility of court challenge, and a reasonable presumption of illicit origin (Phillips v. United Kingdom, 2001).

In practice, applying extended confiscation faces numerous challenges: difficulties documenting asset-income discrepancies, lack of a unified financial analysis methodology, and complexity in investigating systemic corruption. In this context, Criminal Assets Recovery Agency plays a crucial role by offering technical and informational support to law enforcement through financial expertise and asset tracing in foreign jurisdictions.

2. National jurisprudence on extended confiscation

Despite legislative alignment with international standards, extended confiscation in Moldova is rarely applied. Reports from the National Anticorruption Center and Criminal Assets Recovery Agency show an increase in asset freezes, but finalized extended confiscation cases remain isolated.

Notable cases involve convictions for corruption by public officials, where courts confiscated property well above lawful income (e.g., vehicles, real estate, bank accounts). In several post year 2020 rulings, defendants failed to justify assets worth hundreds of thousands of euros, which were confiscated under art. 106¹ (Criminal Code of the Republic of Moldova, 2002).

However, jurisprudence is still developing, and courts apply this measure cautiously, often demanding direct evidence of origin, even though the mechanism allows confiscation without a direct link to a specific crime.

This cautious approach may stem from a desire to avoid infringing on rights protected by Art. 1 of Protocol No. 1 ECHR.

Extended confiscation is indispensable in combating financial and economic crime, but its success depends on political will and legal provisions ensuring the mechanism's application, including specialized training for prosecutors and judges on handling illicit origin presumptions.

Although Moldova has a relevant legal framework, judicial practice needs consolidation, inter-institutional cooperation must improve, and law enforcement and financial investigations require adequate preparation.

The Constitutional Court of Moldova, in its Decision No. 6 of April 16, 2015, ruled that: "Legally acquired property cannot be confiscated (Art. 46 para. 3 of the Constitution). Such sanctions may be applied if property was used for or resulted from a crime (Art. 46 para. 4). Confiscation is a sanction applied to the owner for criminal or administrative offenses. [...] However, such confiscation must always be legally regulated. According to Art. 72 (n) of the Constitution, only Parliament can regulate offenses and penalties through organic laws."

The Court emphasized that special confiscation applies to assets used in or resulting from crimes, while extended confiscation also targets other assets presumed to stem from criminal activity.

The Venice Commission, in its interim opinion for Bulgaria (82nd plenary session, 2010), stated: "It is important for the legislator to clarify the level of evidence required for confiscation, to avoid unjustified interferences with property or fair trial rights. Such clarity ensures legal security and predictability."

Regarding third-party transfers intended to avoid confiscation, the Constitutional Court cited Directive 2014/42/EU, which allows confiscation if the third party knew or should have known the purpose of the transfer.

The Court concluded that extended confiscation, as regulated, does not infringe private property or the presumption of innocence, provided the state proves the illicit origin of the assets.

Currently, the Constitutional Court is reviewing Challenge No. 108g of May 5, 2025, concerning the constitutionality of provisions in the Criminal Procedure Code and Art. 106¹ of Criminal Code on extended confiscation. A ruling is still pending.

3. The Seizure Imposed During Criminal Investigation

The Criminal Procedure Code of the Republic of Moldova (Criminal Procedure Code of the Republic of Moldova, 2003) regulates the imposition of criminal seizure over the assets of the suspect, accused, or defendant, with the purpose of ensuring special or extended confiscation, or guaranteeing the recovery of damages caused by the crime.

This measure may also be applied to assets held by third parties, if it is proven that the transfer was made to avoid confiscation.

In the field of combating economic and financial crime and corruption, a key role is played by mechanisms for identifying, seizing, managing, and realizing assets acquired through criminal means.

In the Republic of Moldova, this competence is entrusted to the Criminal Assets Recovery Agency, a specialized body established under Law No. 48 of March 30, 2017, on the Criminal Assets Recovery Agency, with autonomous status within the National Anticorruption Center.

Under the legal framework, the Criminal Assets Recovery Agency is responsible not only for identifying criminal assets, but also for their temporary management during the criminal proceedings, in order to preserve their patrimonial value and prepare them for potential confiscation.

According to the provisions of the aforementioned Law, Criminal Assets Recovery Agency may administer the seized assets either directly or through public or private entities. These assets may include movable and immovable property, financial assets, or shares in commercial companies.

The administration of seized assets must comply with the principles of legality, transparency, economic efficiency, and integrity in public administration.

Criminal Assets Recovery Agency's competence in managing seized assets is a key element in the chain of recovering damage caused by criminal offenses. The success of asset recovery does not depend solely on the efficiency of criminal investigations or court confiscation orders, but also on the state's ability to preserve and capitalize on the seized assets.

Thus, strengthening Criminal Assets Recovery Agency's role is a priority within the national anti-corruption strategy and the broader justice reform agenda.

4. The Right to Respect for Property

Confiscation, in any form, constitutes an interference with the right to property. However, the European Court of Human Rights (ECtHR) has established as a principle that such measures can be compatible with the Convention, provided they are prescribed by law, pursue a legitimate aim, and are proportionate and necessary in a democratic society.

The ECtHR has held in numerous cases (e.g., *Philips v. the United Kingdom*, 2001; *Gogitidze and Others v. Georgia*, 2015) that extended confiscation does not violate the right to property, as long as appropriate procedural safeguards are in place, such as:

- the possibility to challenge the measure before a court;
- the existence of a fair trial (ECHR, 1950, art. 6);
- the reasonable and justified nature of the presumption regarding illicit origin.

Therefore, the national mechanism regulated by Article 106¹ of the Criminal Code of the Republic of Moldova, which allows for confiscation of assets in cases of a significant discrepancy between wealth and lawful income, is in line with ECtHR jurisprudence, insofar as it is applied with respect for the principles of proportionality and fairness.

Hence, the legal provisions of the Republic of Moldova do not contravene Article 6 § 2 of the Convention (ECHR, 1950), provided that courts do not automatically presume the illicit nature of assets and ensure the possibility of effective defense.

Accordingly, the imposition of seizures, the realization, and administration of assets must take place within a clear and foreseeable procedural framework, with safeguards against abuse.

The right to defense, the reasoning of imposed measures, and the opportunity to challenge them in court are essential to ensure compatibility with the standards of article 6 of the ECHR.

A key aspect concerns the proportionality of the measures in relation to the legitimate aim pursued. In this sense, confiscation must not be arbitrary or disproportionate to the gravity of the offense or the value of the damage. The application of the mechanism must be individualized, based on objective criteria and well-reasoned in each case.

Therefore, property is one of the areas to which the European Court of Human Rights has recognized the applicability of article 6 of the Convention (ECHR, 1950).

Conclusions

Confiscation, including extended confiscation in the Republic of Moldova, represents an essential legal-criminal mechanism for combating illicit enrichment and organized crime.

Regulated by Article 106¹ of the Criminal Code, it provides the state with tools to act upon assets whose legal origin cannot be justified, in cases where a significant discrepancy between declared wealth and lawful income is identified.

Although compatible with ECHR standards, practical application remains limited due to evidentiary challenges and the reluctance of courts. The mechanism involves a partial reversal of the burden of proof, while still requiring a fair trial. The success of this instrument depends on the professionalism of prosecutors, the specialization of judges, and the technical support provided by Criminal Assets Recovery Agency.

Extended confiscation is not a criminal sanction in the classical sense, but rather a measure for the recovery of the value of assets acquired unlawfully, ensuring the balance between the right to property and the public interest is essential.

To this end, precise legislation, coherent and transparent financial analysis methodologies, and institutional will are required. Consolidating jurisprudence in this area is fundamental for the effective application of such measures.

Respecting the principles of legality, proportionality, and procedural fairness is imperative to ensure the legitimacy and sustainability of these instruments in a state governed by the rule of law.

Extended confiscation thus stands as an essential tool in the modern era of criminal justice, addressing the need for an effective response to profit-driven crime.

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BRIEF CONSIDERATIONS REGARDING THE RESPECT FOR HUMAN DIGNITY IN CRIMINAL PROCEEDINGS

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Abstract:

The respect for human dignity implies that individuals held criminally liable must not be subjected to inhuman or degrading treatment. On August 10, 1990, Romania acceded to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Romania's accession to the above-mentioned convention created an obligation to incorporate provisions into domestic legislation regarding the respect for human dignity.

The importance of this principle in the field of human rights led to the inclusion of Article 2(2) in the Romanian Constitution under the section "Fundamental Rights and Freedoms": "No one shall be subjected to torture or to any kind of inhuman or degrading punishment or treatment."

The European Convention on Human Rights, through Article 3, also provides that no one shall be subjected to torture or to inhuman or degrading treatment or punishment. This article highlights one of the fundamental values of a democratic society—a right that must remain inviolable: the right not to be subjected to treatment contrary to human dignity.

Keywords: *human dignity, human rights, torture.*

JEL Classification: *K 38*

Human rights and the observance of human rights are the core of any democratic society. We observe that the concept of human rights protection is extensively discussed nowadays.

Similarly, the respect for human dignity is a fundamental principle of criminal law. It is important to underline that human rights are grounded in principles—especially in the field of criminal justice.

Individuals held criminally liable must not be subjected to inhuman or degrading treatment. This is the essence of respecting human dignity.

On August 10, 1990, Romania acceded to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (adopted in New York on December 10, 1980).

With Romania's accession to the Convention, the obligation emerged to incorporate into national law specific provisions concerning the respect for human dignity. Thus, Law No. 32/1990 introduced Article 5¹ into Chapter I — Purpose and Basic Rules of Criminal Procedure — of the Criminal Procedure Code, which stipulates: "*Any person undergoing criminal investigation or trial must be treated with respect for human dignity. Subjecting such a person to*

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torture or to cruel, inhuman or degrading treatment is punishable by law.” In accordance with this principle, the Criminal Code was amended to include Article 267¹ criminalizing torture, Article 267 on inhuman or degrading treatment, and Article 266 establishing the offence of unlawful arrest and abusive investigation.

The importance of this principle regarding the protection of human rights led to the inclusion of Article 2(2) in the Romanian Constitution under the section “Fundamental Rights and Freedoms”: *“No one shall be subjected to torture or to any kind of inhuman or degrading punishment or treatment.”*

The incorporation in the Criminal Code of a set of offenses that hinder the administration of justice highlights that when the provisions ensuring respect for human dignity are violated by official actors conducting criminal proceedings, they must be held accountable. A relevant example is the offense defined in Article 266 of the Criminal Code—unlawful arrest and abusive investigation.

Several procedural rules further support the enforcement of this principle, such as: Articles 239–241 (suspension of criminal investigation), Article 275(1) (the right to file a complaint against acts carried out during criminal investigation), Article 303 (suspension of trial), Article 453(a) (postponement of prison sentence execution), and Article 455 (interruption of sentence execution).

Article 5 of the Universal Declaration of Human Rights (adopted by the UN General Assembly on 10 December 1948 through Resolution 217 A (III)) provides that: *“No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”*

The concept of torture is defined by the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (ratified by Romania on 4 October 1994 and entered into force on 1 February 1995), adopted and opened for signature through Resolution 39/46 of 10 December 1984. Through this instrument, the Committee against Torture was established as a monitoring body.

Similarly, Article 3 of the European Convention on Human Rights states that no one shall be subjected to torture or to inhuman or degrading treatment or punishment. This provision underscores one of the fundamental values of a democratic society: the right not to be subjected to treatment contrary to human dignity, a right that must not be infringed.

The European Court of Human Rights defines inhuman treatment as that which intentionally causes severe mental or physical suffering, and degrading treatment as that which “grossly humiliates an individual before others, forces them to act against their will or conscience,” or degrades them

“in their own eyes” (ECHR, *Tyrer v. the United Kingdom*, 25 April 1978, *ECHR Case Law*, All Beck Publishing House, Bucharest, 2003).

The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (*International documents on the fight against torture and inhuman or degrading treatment*, Romanian Institute for Human Rights, co-ordinators Irina Moroianu Zlătescu, Emil Marinache, Rodica Șerbănescu, 1998, pp. 44-61. Romania acceded to the Convention through Law No. 19 of 9 October 1990, published in Official Gazette No. 112 of 10 October 1990) was adopted and opened for signature by Resolution 39/46 of 10 December 1984. It entered into force on 26 June 1987, pursuant to the provisions of Article 27(1). Article 1 of the Convention defines torture as: “any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining information or a confession from them or a third person, punishing them for an act they or a third person has committed or is suspected of having committed, intimidating or coercing them or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by, or at the instigation of, or with the consent or acquiescence of a public official or other person acting in an official capacity.” (*International documents on the fight against torture and inhuman or degrading treatment*, Romanian Institute for Human Rights, co-ordinators Irina Moroianu Zlătescu, Emil Marinache, Rodica Șerbănescu, 1998, pp. 44-61. Romania acceded to the Convention through Law No. 19 of 9 October 1990, published in Official Gazette No. 112 of 10 October 1990).

The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment establishes a monitoring mechanism—the Committee against Torture. The Committee is composed of 10 experts of high moral standing and recognized competence in the field of human rights. Its members are elected by secret ballot from a list of candidates nominated by States Parties, for a four-year term.

At the same time, the Convention sets the framework for cooperation between States Parties and outlines their obligations. Among the duties imposed on States Parties, the Convention lists the following:

- no State Party shall expel, return, or extradite a person to another State where there are substantial grounds to believe they would be in danger of being subjected to torture (Article 3);
- each State shall ensure that all acts of torture are offenses under its criminal law and are adequately punished. The same applies to attempts to commit such acts (Article 4 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment);

- States Parties signatory to this Convention shall have the possibility of detaining or taking any legal measures against any person suspected of having committed an offense referred to in Article 4, and shall proceed immediately with a preliminary inquiry (Article 6 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment);
- If the presumed offender is found within the territory of a State Party and not extradited, the matter must be submitted to the competent authorities for prosecution (Article 7 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment).

Article 16 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment defines inhuman treatment by reference to torture, describing such conduct as “other acts (...) which do not amount to torture, when such acts are committed by, at the instigation of, or with the consent or acquiescence of a public official or other person acting in an official capacity.”

Furthermore, the European Court of Human Rights has held that the use of physical force by a State agent which is not made strictly necessary by the conduct of the individual constitutes a breach of human dignity and, in itself, a violation of Article 3 (ECHR, *Tekin v. Turkey*, judgment of 9 June 1998).

Inhuman treatment has also been found where a person was held in prison despite a medical condition so severe as to be incompatible with detention, and where adequate medical care was denied.

Similarly, the performance of experimental medical procedures on an individual without their consent has been qualified as inhuman treatment.

For a punishment to be considered “degrading,” the humiliation it causes must exceed the degree of humiliation inherent in any criminal punishment (ECHR, *Tyrer and Costello-Roberts* judgments).

As for capital punishment, although not explicitly prohibited by Article 3, its method of execution may raise issues falling within its scope. For instance, in a judgment against the United Kingdom (*Soering v. the United Kingdom*), in which the British authorities were found to have infringed Article 3, the Court found that the manner in which the death penalty was imposed or executed, the disproportion between the punishment and the gravity of the offense, and the conditions of detention prior to execution may place the death penalty within the ambit of Article 3.

The jurisprudence of Convention bodies defines torture in relation to inhuman treatment, distinguishing it by the intensity of the victim’s suffering (ECHR, *Ireland v. the United Kingdom*, para. 167). The term has undergone an evolving interpretation.

An act of torture was found in the subjection of a detainee to the so-called “Palestinian hanging” technique (ECHR, *Aksoy v. Turkey*, para. 63), which, being “premeditated and practiced,” and capable of causing paralysis in both arms, was deemed exceptionally cruel and severe. Similarly, the gang rape of a young woman by several police officers was classified by the Court as an act of torture (ECHR, *Aydın v. Turkey*, para. 82).

European jurisprudence imposes upon states a “positive obligation to act” (Renucci, 2009), requiring them to protect all persons within their jurisdiction.

Degrading treatment is characterized by humiliation reaching a certain threshold (ECHR, *Tyrer v. the United Kingdom*, judgment of 25 April 1978, ECHR Case Law, All Beck Publishing, Bucharest, 2003)—a case involving a person stripped naked and suspended by the arms, resulting in paralysis of both limbs. The degree of humiliation must exceed the ordinary contempt associated with judicial punishment. A counterexample is the use of handcuffs (ECHR, *Raninen v. Finland*, 16 December 1997, para. 49), which was not considered degrading treatment, as its purpose was not to humiliate but part of standard detention procedures to which arrested persons are subject in serving their sentence.

The death penalty may constitute inhuman treatment if imposed following an unfair trial. European judges have held that the anguish experienced by the condemned cannot be dissociated from the injustice of the proceedings leading to such a sentence, which no longer finds its place in a democratic society (Renucci, 2009).

Today, two trends exist globally regarding maintaining the death penalty:

- one trend includes states that have abolished it from their legislation;
- the other includes those that have retained it.

In Romania, the death penalty was abolished by Decree-Law No. 6 of 7 January 1990 issued by the Council of the National Salvation Front (F.S.N.) and replaced by life imprisonment. All legal provisions referring to the death penalty in the Criminal Code, the Code of Criminal Procedure, and other legal acts are now interpreted as referring to life imprisonment.

According to Article 22(3) of the Romanian Constitution, under Chapter II on Fundamental Rights and Freedoms (a non-revisable chapter), the death penalty is prohibited.

Romania is also a party to the Second Optional Protocol to the International Covenant on Civil and Political Rights (1989), which prohibits the death penalty.

Furthermore, the European Convention on Human Rights prohibits the death penalty.

All of these lead to the conclusion that the death penalty can no longer be reintroduced in Romania. For it to be reinstated, the country

would have to denounce the relevant protocol, to withdraw from the Council of Europe, and to repeal its Constitution.

The current Code of Criminal Procedure no longer refers explicitly to the subjection of individuals to torture or to cruel, inhuman, or degrading treatment. Instead, paragraph 2 provides that: “Respect for private life, the inviolability of the home, and the secrecy of correspondence are guaranteed. The restriction of these rights is permitted only under the conditions laid down by law and if necessary in a democratic society.” Compared to the previous Code of Criminal Procedure, the principles of respect for human dignity and private life are now regulated together. In my view, the principle of respect for human dignity was more clearly defined in the earlier version of the Criminal Procedure Code, since— as previously noted—both torture and cruel, inhuman, or degrading treatment constitute serious infringements of human dignity. Indeed, respecting private life also entails respecting human dignity. Nevertheless, it would have been preferable for the two principles to be regulated separately.

I consider it necessary to include within the Criminal Procedure Code the principle of equality of individuals in criminal proceedings. Since this principle is not regulated in either the previous or current version of the Code, its formal inclusion is essential to emphasize that in both criminal procedure and substantive criminal law, all individuals are equal before the law, without discrimination, and that no one is above the law.

The presence of the principle of equality before the criminal procedural law is warranted for the following reasons:

- the investigation and trial phases must be conducted for all individuals by the same investigative bodies and courts;
- all individuals must be subject to identical procedural rules, with no differences based on race, ethnicity, nationality, language, religion, gender, opinion, etc. to which the person on trial belongs;
- all parties in a criminal case must enjoy the same procedural rights, free of any discrimination, and no person should be above the law.

It is worth noting that the current Code of Civil Procedure, in force since 15 February 2013, has adopted this principle, stating in Article 8: “In civil proceedings, parties are guaranteed the exercise of procedural rights equally and without discrimination.”

Conclusions

The concept of human rights is widely and intensely debated today. States such as the United Kingdom have come to question the regulation of certain rights enshrined in the European Convention on Human Rights.

Respect for human dignity remains a core principle of criminal law.

Individuals held criminally liable must not be subjected to inhuman or degrading treatment—this requirement underscores the broader imperative of respecting human dignity.

Article 11 of the Criminal Procedure Code emphasizes that any person under criminal investigation or on trial must be treated with respect for their human dignity.

Equally, respect for private life, the inviolability of the home, and the secrecy of correspondence are guaranteed. These rights may only be restricted under conditions prescribed by law and solely when necessary in a democratic society.

The Criminal Procedure Code (adopted by Law No. 135/2010, published in the Official Gazette of Romania, Part I, No. 486 of July 15, 2010; the new Code will enter into force on the date set by its implementation law) maintains many of these foundational principles, while enhancing their legal substance—such as the right to defense, the discovery of the truth, the presumption of innocence, the right to liberty and security, respect for human dignity and private life, the official language of proceedings, and the right to an interpreter. Moreover, it introduces new principles absent from the previous legislation, including *ne bis in idem*, the fairness and reasonable length of criminal proceedings (according to Article 6 of the Code of Criminal Procedure, the *ne bis in idem* principle states: “No person shall be prosecuted or tried for a criminal offense in respect of which a final judgment has already been rendered, even if under a different legal classification.”)

These reforms are crucial for supporting and safeguarding human rights in criminal proceedings, as absolutely every person—even those found guilty of committing a criminal offense—must benefit from these fundamental rights.

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THE DEFENDER AND THE EFFECTIVE EXERCISE OF THE RIGHT TO DEFENSE IN CRIMINAL PROCEEDINGS: LEGAL AND JURISPRUDENTIAL DIMENSIONS

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Abstract:

The right to defense is a fundamental principle of criminal proceedings in the Republic of Moldova, regulated by the Constitution and the Criminal Procedure Code. According to art. 26 of the Constitution, „The right to defense is guaranteed” as an essential right of any person accused. The Criminal Procedure Code outlines how this right should be exercised and the role of the defender in criminal proceedings. Thus, the accused has the right to benefit from legal assistance throughout the criminal process, both during the criminal investigation phase and before the courts. Additionally, the suspect, the defendant, and the accused have the right to choose their defender, and in specific cases where the participation of a defender is mandatory, the court or prosecutor will appoint a lawyer ex officio.

The case law of the European Court of Human Rights plays an important role in interpreting the right to defense. The Court has emphasized that the right to defense is not limited to the mere presence of a lawyer, but involves an active and effective defense. This includes the defender’s access to the case file, the right to participate in the hearing of witnesses, and the possibility to propose or request evidence. These principles have been integrated into national legislation, influencing the application of the right to defense in proceedings in the Republic of Moldova.

However, the effective application of this right depends on the proper respect of the legislation and its implementation in practice. The role of the defender is essential to protect the rights of the accused, and any procedural obstacle that limits this right may affect the fairness of the criminal trial. Therefore, it is necessary for authorities to ensure the proper implementation of legal norms to guarantee the effective exercise of the right to defense.

Keywords: criminal proceedings, right to defense, defender, accused.

Introduction

Among universally recognized values, human rights occupy an essential role, determined by their universal, stable, and well-founded character. The restriction of the exercise of these rights is possible exclusively on the basis of the law and only to the extent that it is required by the legitimate interests of society or the state. In this context, the right to defense—conceived as a set of organizational and legal means intended to eliminate obstacles that hinder its effective exercise—is considered one of the most important procedural rights of the accused, taking precedence over other procedural guarantees.

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International standards governing human rights ensure that individuals held criminally liable are entitled to the right to defense, outlining a complex system for its protection. Thus, Article 11 of the Universal Declaration of Human Rights (Universal Declaration of Human Rights, 1948, art. 11) establishes the right of any person accused of a criminal offense to enjoy “all the guarantees necessary for their defense” in a public trial, providing a minimum framework for the protection of the defense. Paragraph 3 of Article 14 of the International Covenant on Civil and Political Rights (International Covenant on Civil and Political Rights, 1966, art. 14 (3)) proclaims a set of minimum guarantees for the accused: prompt and detailed information in a language they understand, adequate time and facilities to prepare the defense, the right to be present at the trial and to defend oneself personally or through a lawyer of their choosing, or, when necessary, through free legal assistance. It also enshrines the right to examine prosecution witnesses, to obtain the attendance and examination of defense witnesses under the same conditions, the right to free interpretation, and the right not to be compelled to testify against oneself or to confess guilt.

Paragraph 3 of Article 6 of the European Convention on Human Rights (ECHR, 1950, art. 6 (3)) provides the same minimum rights: fair hearings before an independent and impartial tribunal, the presumption of innocence, the right to information, time and resources to prepare the defense, legal assistance, access to an interpreter, and the examination of witnesses—all of which are fundamental guarantees of the right to defense in criminal proceedings.

These international norms have been transposed into national law, being included in the Constitution of the Republic of Moldova (Negru, Osmochescu, 2012, p. 574) and further developed through the regulations of the Criminal Procedure Code (Criminal Procedure Code of Republic of Moldova, 2003), thereby elaborating the international principles within the framework of national legislation.

1. The right to defense – a procedural guarantee of the accused

The Constitution of the Republic of Moldova (Constitution of the Republic of Moldova, 1994, art. 26) enshrines the right to defense as a fundamental principle of the rule of law, granting every individual the opportunity to respond independently and on legal grounds to violations of their rights. It explicitly provides for the right to qualified legal assistance, which is essential, especially in criminal cases involving suspects, accused, or defendants. Legal assistance, an integral component of the right to defense, is exercised exclusively by persons authorized by law, known as defenders, and is applicable throughout the entire criminal proceeding,

whether the lawyer is chosen or appointed *ex officio*. The Constitution also ensures the protection of their professional independence, strictly regulating any form of interference in their activity, subject to legal sanctions.

The term “defense” can be understood in two distinct senses in criminal procedural law. In a broad sense, it refers to a fundamental principle of criminal proceedings, expressing the general purpose of criminal justice—namely, the protection of the rights and freedoms of the individual against prosecution and wrongful conviction. This sense reflects the role of “defense” as a pillar of the rule of law and as a manifestation of the principle of fair competition between prosecution and defense. In a narrower sense, it refers to a specific procedural function—namely, a distinct area of procedural activity carried out by participants on the defense side. This involves concrete actions such as challenging the accusation, contesting evidence, and presenting evidence in support of the interests of the person accused of committing a crime.

Another argument emphasizing the importance of the procedural function of the defense is that the right to defense does not only serve the individual interests of the accused but also holds an objective value, being essential for the administration of justice.

Thus, M. S. Strogovici states: “Ensuring the right to defense for the defendant is not merely about protecting their legal interests; it is also a necessary condition for discovering the truth in criminal proceedings.” (Strogovici, 1975, p. 143) This perspective highlights the fact that judicial truth can only be credibly and fairly attained in a setting where both the prosecution and the defense can equally contribute to the examination of evidence and the circumstances of the case.

Therefore, the defense is not just a tool for individual protection but also an essential mechanism for the proper functioning of the criminal process as a whole. In the absence of an effective defense, the risk of judicial errors increases, and the balance between the parties is severely undermined, which may lead to violations of the principles underlying the right to a fair trial.

2. The status of the defense counsel in criminal proceedings

According to Article 67 (1) of the Criminal Procedure Code of the Republic of Moldova (Criminal Procedure Code of the Republic of Moldova, 2023, art. 67 (1)), the defense counsel is defined as the person who, during criminal proceedings, represents the interests of the suspect, the accused, or the defendant and provides legal assistance by all means permitted by law, including those useful in identifying favorable circumstances. It is also expressly stipulated that the defense counsel may

not be equated by state authorities with the person being defended or with the nature of the case under examination.

This distinction highlights the clear separation between the professional role of the defense counsel and the subject of the trial, in accordance with the principle of the independence of their function and the impartiality in the exercise of the defense.

It has been noted that “(...) through their participation in criminal proceedings, the defense counsel guides, supports, and clarifies, in all procedural aspects, the party they are defending, using, for this purpose, all legal means.” (Mateuț, 1996, p. 78).

In the view of the author Crișu, “(...) the importance of the lawyer lies primarily in the activity they carry out, according to the duties provided by law, in the form of legal assistance within the criminal process” (Crișu, 2017, p. 159).

According to Article 67(2) of the Criminal Procedure Code of the Republic of Moldova (Criminal Procedure Code of the Republic of Moldova, 2023, art. 67 (2)), the following may act as defense counsel: lawyers; other persons expressly authorized by law; and foreign lawyers, provided they are assisted by lawyers from the Republic of Moldova.

According to Article 8 (1) of the Law of the Republic of Moldova on the Legal Profession, a lawyer is a person who has obtained a license in accordance with the law and has the right to offer consultations and explanations, present conclusions on legal issues, provide oral and written information regarding legislation; draft legal documents; represent the interests of the accused in court; participate in the criminal investigation and in judicial debates in criminal cases as defense counsel or representative of the victim, the civil party, the civilly liable party, or witnesses; conduct independent investigative activities, among others. (Law No. 1260 of 19 July 2002 on the Legal Profession)

To acquire the status of a lawyer, a person must cumulatively meet several conditions, especially: to be a citizen of the Republic of Moldova; to have full legal capacity; to hold a law degree; to have an impeccable reputation; to complete a professional internship and pass the qualification exam (Law No. 1260 of 19 July 2002 on the Legal Profession, art. 10).

Persons listed in Article 67 (2) Criminal Procedure Code (Criminal Procedure Code of the Republic of Moldova, 2023, art. 67 (2)), acquire the status of defense counsel from the moment they assume the commitment to defend the interests of the person concerned, with that person's consent. Once the defense counsel has undertaken the defense, they must notify the criminal investigation body or the court. A lawyer who provides state-guaranteed legal assistance acquires the status of defense counsel at the

moment when the coordinator of the territorial office of the National Council for State-Guaranteed Legal Aid issues a decision granting qualified legal assistance. This decision is communicated, as applicable, to the applicant, the criminal investigation body, or the court.

The defense counsel is required to confirm their status and powers before the criminal investigation body or the court through the following documents: the lawyer's identification card issued by the Ministry of Justice of the Republic of Moldova, which confirms their membership in the legal profession and indicates the name of the law office or, where applicable, the legal bureau in which they operate; the document confirming the authorization to practice as a defense counsel is the license to practice law. The license is issued for an indefinite period and is valid throughout the entire territory of the Republic of Moldova; the mandate issued by the law office/legal bureau indicating the license number and the date of its issuance; or another document confirming the defense counsel's authority.

A person who cannot prove their status and authority as a defense counsel with a corresponding ordinance or a reasoned ruling shall not be allowed to participate in the criminal proceedings.

3. Jurisprudential Dimensions of Exercising the Right to Defense

It is noted that, according to the case law of the European Court of Human Rights, the right to defense, guaranteed by Article 6 paragraph 3(c) of the Convention, is "a relative right, with the possibility that the accused may waive its exercise" (Crișu, 2017, p. 160).

Thus, "every accused has, in particular, the right to defend himself or to be assisted by a lawyer of his own choosing, and if he does not have sufficient means to pay for such assistance, to be provided free legal aid by a lawyer assigned ex officio, when the interests of justice so require." (ECHR, 1950, art. 6 (3) (c)).

Although the wording of this article appears imperative, the European Court of Human Rights has consistently interpreted that this right is relative, not absolute, and that the accused may, under certain conditions, voluntarily and knowingly waive its exercise.

However, such a waiver is not valid under any circumstances; it must meet strict requirements to be compatible with the standards of the Convention.

Waiver of the right to defense is possible, but it must be unequivocal, made knowingly, and must not contradict the interests of justice.

In the case of *Pakelli v. Germany*, the Court held that when the interests of justice require it, it is clear that the personal appearance of the accused before the jurisdictional court cannot compensate in any way for the

absence of a professional lawyer; without the services of a practitioner, the person would not be able to make a valuable contribution to the legal issues at stake (*Pakelli v. Germany*, 1983).

In its case law, the European Court of Human Rights has established that the situation where the conclusions of the ex officio appointed lawyer—in terms of the lack of chances of success of a cassation appeal—later coincide with those of the Ministry of Justice, which, under national law provisions, refused to file such an appeal on behalf of the claimant after reviewing the case file, does not constitute a violation of the right to defense.

Furthermore, „no national jurisdiction can compel a lawyer—appointed under a legal aid scheme or chosen by the accused—to file any appeal whatsoever when, after studying the case file, the defense counsel considers that such an appeal would be devoid of any chance of success” (*Bârsan*, 2006, p. 561).

Regarding the positive obligations of the state under Article 6 of the Convention, in the case of *Artico v. Italy*, the European Court stated that if a lawyer is unable to fulfill their professional duties, the state is obliged to ensure that the lawyer performs those duties. We consider that the accused’s right to benefit from qualified legal assistance must be actively protected by the state (*Artico v. Italy*, 1980).

In the case of *Vaudelle v. France*, the ECHR emphasized that the Convention system imposes on states, in certain cases, a positive obligation to adopt measures that effectively guarantee the rights enshrined in Article 6, including the right to defense. States must demonstrate diligence in ensuring that individuals effectively enjoy the full scope of the rights guaranteed by Article 6 (*Vaudelle v. France*, 2001).

In the case of *Hoang v. France*, it was held that if the issues at stake are complex, if the defense counsel lacks the necessary legal training to present and argue valid points, and if only an experienced lawyer can adequately prepare the case file, the interests of justice require that a lawyer be officially responsible for the file (*Hoang v. France*, 1992).

We consider that the term “qualified legal assistance” is directly related to the term “effective legal assistance.” Regarding the effectiveness of legal assistance provided by court-appointed lawyers, in the case of *Nefedov v. Russia*, the ECHR reiterated as a general principle applicable to the right to free legal aid that Article 6 paragraph 3 guarantees every accused person the right to be assisted, without specifying the concrete manner in which this right should be exercised. Under the Convention, the states parties enjoy a certain margin of appreciation in choosing concrete measures to ensure respect for the rights of the accused, in accordance with

the particularities of their national legal systems. However, it is the task of the European Court of Human Rights to assess whether these measures comply with the requirements of a fair trial, as enshrined in Article 6 of the Convention.

In this regard, it must be emphasized that the rights guaranteed by the Convention are not merely theoretical or illusory but must be concrete and effective. Consequently, the mere formal appointment of a court-appointed lawyer is not, in itself, sufficient to guarantee the effectiveness of the legal assistance provided to the accused (*Nefedov v. Russia*, 2012).

Therefore, the right to free legal assistance from a qualified lawyer can only be considered effective, real, and guaranteed to the extent that the defense counsel not only was formally assigned to represent the accused but also provided concrete, active, and effective legal assistance.

In the judgment of *Correia de Matos v. Portugal* the European Court of Human Rights stated that the decision to allow a criminal accused to defend themselves or to appoint a lawyer *ex officio* falls within the margin of appreciation of the contracting states, which are better placed than the Court to choose the most appropriate means to enable their judicial system to guarantee the right to defense, the essential aspect being that the person concerned can present a defense in accordance with the requirements of a fair procedure. In the case at hand, the reasons given to require the appointment of a lawyer appeared relevant and sufficient. In reality, this was a measure taken in the interest of the accused and aimed at ensuring their effective defense, so that the national courts could legitimately consider that the interests of justice required the mandatory appointment of a lawyer. The fact that the accused was himself a lawyer does not alter this finding, as an accused person cannot always assess the interests at stake and ensure effective defense. In this case, the Court found that the applicant's defense was properly ensured (*Correia de Matos v. Portugal*, 2001).

In *Neziraj v. Germany*, the Court noted that the effective legal assistance of a competent lawyer, whether chosen or appointed *ex officio*, constitutes a fundamental guarantee of a fair trial (*Neziraj v. Germany*, 2012).

The ECHR has concluded in its case law that states cannot be held responsible for the actions or decisions of an accused's lawyer, since the conduct of the defense essentially concerns the party and the counsel, whether appointed or chosen (see *Czekalla v. Portugal*, 2003; *Bogumil v. Portugal*, 2008). However, when the *ex officio* appointed lawyer is manifestly unable to provide effective defense, Article 6 § 3 (c) of the Convention requires national authorities to intervene.

In *Güveç v. Turkey*, the lawyer was not appointed *ex officio*. Nevertheless, taking into account the applicant's age, the seriousness of the

offense he was accused of, the contradictory allegations brought by the police and a prosecution witness, and the number of hearings the applicant did not attend, the Court found that the applicant's lawyer did not adequately represent him, so the national court should have appointed a lawyer *ex officio*. The lack of effective legal assistance exacerbated the consequences of the applicant's inability to participate in the trial and led to a violation of the right to a fair trial—Article 6 § 1 in conjunction with Article 6 § 3 (c) of the Convention (Güveç v. Turkey, 2009).

The ECHR's case law has developed a consolidated doctrine on the criteria that legal assistance must meet to be considered compliant with the requirements of Article 6 of the Convention. The Court emphasized that the right to defense cannot be illusory: the state not only has the obligation to appoint a lawyer but also to ensure that the legal assistance provided is effective. It was stressed that the mere formal appointment of counsel is not sufficient if the lawyer does not actively and competently participate in the proceedings.

Thus, the role of the defense counsel is not limited to legal formalism but involves active engagement at all stages of the criminal process—from detention, preventive arrest, and criminal investigation to courtroom hearings and exercising appeals. For the defense to be effective, the lawyer must have access to the case file, adequate time and resources to prepare the defense, the ability to communicate confidentially with their client, and to submit motions, objections, or evidence in the client's favor. All these elements are recognized and protected by the Court in its consistent case law.

The Court has also emphasized that the right to defense imposes positive obligations on state authorities: they must refrain from any interference that could undermine the lawyer's activity and must create the necessary conditions for the conduct of a genuine defense. In this regard, access to a lawyer at the earliest stages of the criminal procedure is essential for a fair trial, and the absence of such access can compromise the entire fairness of the proceedings.

Conclusions

The right to defense is one of the essential foundations of a fair criminal trial, and the European Court of Human Rights (ECtHR) has consistently affirmed that respecting this right is not limited to the mere existence of formal legal regulations, but requires a real and effective possibility for the accused to exercise their defense freely, competently, and effectively. Within this framework, the role of the defense counsel is decisive, and their intervention must go beyond mere procedural presence to effectively guarantee the procedural rights of the accused.

The provision of legal assistance in criminal proceedings must ensure that criminal liability is engaged exclusively against persons truly guilty of committing offenses, and that their guilt is established by an independent and impartial court in a public hearing, in accordance with the gravity of the committed acts and the circumstances of the case.

The right to defense involves not only the efforts of lawyers who strive to protect the rights and interests of their clients, but also the obligation of competent authorities to guarantee the effective exercise of these rights. The lawyer, as defense counsel, is the person who provides legal assistance to the suspect, the accused, or the defendant throughout the criminal process. The participation of the defense counsel in the proceedings constitutes the main form of exercising the right to defense, contributing also to the respect of other legitimate rights and interests of the person, as well as to the establishment of the truth in each specific case.

Therefore, the participation of the defense counsel in the criminal process contributes not only to the protection of the individual interests of the accused but also to the functioning of criminal justice. Through their activity, the lawyer ensures respect for the adversarial principle, equality of arms, and the right to a fair trial.

Thus, the defense counsel is a fundamental pillar of a fair criminal trial, and the jurisprudence of the European Court of Human Rights has played a crucial role in defining and consolidating the standards regarding the effectiveness of defense. Only by ensuring real, active, and competent legal assistance can there be a true protection of the accused's rights and the realization of a trial in accordance with the requirements of the European Convention on Human Rights.

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FREEDOM OF EXPRESSION AND THE RIGHT TO INFORMATION - FUNDAMENTAL HUMAN RIGHTS RECOGNIZED AT EUROPEAN AND INTERNATIONAL LEVEL

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Abstract:

Fundamental human rights are recognized at national, European and international level. Among them, freedom of expression and the right to information occupy an important place.

In the current international context, there is constant concern about the expression of opinions and information from official sources. At the same time, an important question is the possibility of manipulation by expressing opinions contrary to official information, which is censored, thus limiting freedom of expression and the right to information. There are suspicions that institutional transparency is being abandoned and that information provided to the public is being distorted.

The study aims to analyze the way freedom of expression and the right to information are addressed by the Council of Europe, the European Court of Human Rights, as well as by representative non-governmental organizations in this field (Reporters without Borders, Transparency International, etc.).

Key words: *human rights, freedom of expression, right to information, transparency of decision-making, censorship*

I. General Considerations

Democracy is not a modern concept, but an inherited one, the origin of the word coming from the Greek "*demos* - people" and "*kratos* - power", and it is considered a concept whereby a political regime is the one that represents the will of the citizens directly or through elected representatives. It has certain basic principles, such as sovereignty, universal suffrage, multiparty system, limitation of powers in the state and, essentially, respect for human rights. An important place among the established human rights is the right to freedom of expression.

The Declaration of the Rights of Man and of the Citizen², which is considered to be the fundamental charter that enshrined the basic human rights of the people in 1789, is credited with laying the foundations of democracy as we know it today.

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² in French „Déclaration des Droits de l'Homme et du Citoyen”

Amendment I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

Article 11 states: "The free communication of one's thoughts and opinions is one of the most precious human rights; every citizen may therefore speak, write and print freely, except in cases provided by law, in which he shall be liable for the misuse of this freedom."¹

Of course, the study must also refer to the Constitution of the United States of America, adopted in 1787. Its First Amendment concerns respect for human rights, including freedom of expression.²

These fundamental values have been enshrined in the constitutions of many countries as well as in documents of international bodies.

Although guaranteed, freedom of expression has recently raised growing concerns. On the one hand, the existence of communication on social networks allows opinions to be expressed within the community in question, but there is also a growing tendency for interference to distort information and manipulate public opinion.

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As with any relative right, it is important to ensure a balance, and at European level, the issue has been raised that people should only be informed by official sources, to avoid the spread of false information. However, certain problems have also arisen in this context, such as the closure of journalists' social media accounts and even the arrest of some people for messages considered to be crimes of opinion.

¹file:///C:/Users/home/Downloads/declaration-des_droits_de_l_homme_et_du_citoyen_du_26_aout_1789_568698.pdf

²<https://teachprivacy.com/nsa-surveillance-and-the-first-amendment/>

The social challenge is whether such measures are useful and where censorship begins. Opinions are divided, of course, with journalists demanding respect for freedom of expression, which is at the heart of their profession (the press "the fourth power in the state", "the watchdog of democracy"), and governments invoking security, national security and public order.

The organization Reporters Without Borders¹ has published the RSF World Press Freedom Index 2025, which finds that economic fragility is the main threat to press freedom. The organization believes that "while physical attacks against journalists are the most visible violations of press freedom, economic pressure is also a major, more insidious problem. The economic indicator in RSF's World Press Freedom Index is now at an unprecedented critical low, with its decline continuing into 2025. As a result, the global state of press freedom is now categorized as 'difficult' for the first time in the Index's history."

Romania ranks 55th, down from 49th in 2024. The scores are evaluated taking into account several indicators: political, economic, socio-cultural, legislative and individual security.

The organization Transparency International, while primarily concerned with preventing corruption², also believes that "wider public access to information" is necessary in the context of respect for fundamental human rights, that censorship, especially political censorship, can be a tool of corruption through lack of transparency, and that freedom of expression is essential for a functioning democracy.³

II. International Approach

The United Nations General Assembly adopted and proclaimed the Universal Declaration of Human Rights on December 10, 1948.⁴

Article 19 stipulates that everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without

¹<https://rsf.org/en>

²<https://transparency.eu/our-mission/#:~:text=Transparency%20International%20EU%20advocates%20for,foster%20an%20ethical%20political%20culture>

³<https://www.transparency.org/en/press/transparency-international-warns-the-corruption-perceptions-index-should-not-be-used-to-mask-democratic-decline#:~:text=These%20challenges%20are%20driven%20by%20the%20harsh,an%20increasingly%20adversarial%20climate%20for%20the%20media.&text=We%20have%20alerted%20before%20that%20restricting%20freedoms,for%20engaging%20in%20corruption%20and%20facing%20consequences>.

⁴<https://legislatie.just.ro/Public/DetaliuDocument/22751>

interference by outside interference and freedom to seek, receive and impart information and ideas through any media and regardless of frontiers.

The International Covenant on Civil and Political Rights¹ was adopted by the United Nations General Assembly on 16 December 1966 and entered into force on 23 March 1976.

The Covenant takes over Article 19 of the Universal Declaration of Human Rights, but the text is supplemented by the possibility of restricting freedom of expression:

"1. No one should suffer for his opinions.

2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

3. The exercise of the freedoms set forth in paragraph 2 of this article carries with it special obligations and responsibilities. Accordingly, it may be subject to certain limitations which shall, however, be expressly provided by law and which are necessary:

(a) respect for the rights or reputations of others;

b) the protection of national security, public order, public health or public morals."

In August 2024, Meta (Facebook, Instagram, and WhatsApp) CEO Mark Zuckerberg admitted that, under pressure from US authorities, he had censored content related to the COVID-19² pandemic, and in January 2025, he announced that starting in the US, he was ending the third-party fact-checking program and moving to a community ratings model³, proclaiming more freedom of speech and fewer mistakes.

In January 2025, the TikTok app was banned in the U.S. over concerns about privacy and possible manipulative interference from the Chinese government. Subsequently, the US president, in the name of freedom of speech, decided to reopen the platform for a limited period of time, with the possibility of an extension until negotiations on the sale of the app to American investors were finalized.⁴

¹https://avp.ro/wp-content/uploads/2020/07/pact_mnp.pdf

²<https://www.reuters.com/technology/zuckerberg-says-biden-administration-pressured-meta-censor-covid-19-content-2024-08-27/>

³<https://about.fb.com/news/2025/01/meta-more-speech-fewer-mistakes/>

⁴https://www.lemonde.fr/en/pixels/article/2025/01/10/tiktok-ban-in-the-us-what-can-we-expect-from-the-supreme-court-hearing_6736909_13.html

III. The European Approach

Article 10 of the European Convention on Human Rights¹ provides for freedom of expression

"1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from subjecting broadcasting, cinematographic or television broadcasting organizations to a licensing regime.

2. The exercise of these freedoms involving duties and responsibilities may be subject to such formalities, conditions, restrictions or penalties prescribed by law as are necessary in a democratic society in the interests of national security, territorial integrity or public safety, for the maintenance of order and the prevention of disorder or crime, for the protection of health, morals, reputation or rights of others, for preventing the disclosure of confidential information or for safeguarding the authority and impartiality of the judiciary."

The European Court of Human Rights was set up to guarantee respect for the rights enshrined in the Convention and has a rich jurisprudence on Article 10 - freedom of expression, including in relation to Romania.

The Court's activity report for 2024 highlights 141 violations of Art. 10 of the Convention (including one judgment against Romania).²

The Charter of Fundamental Rights of the European Union³ provides in Title II, Article 11 - Freedom of expression and information, that:

"(1) Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.

(2) Freedom and pluralism of the media shall be respected."

In order to ensure a safe digital space, the EU has adopted the Digital Services Regulation (DSA)⁴, which regulates the responsibilities of online commerce and social media platforms and how to deal with digital challenges such as hate speech or the sale of illegal or counterfeit products.

Among other things, the DSA defines the notion of "content moderation"⁵: 'means activities, automated or non-automated, undertaken by intermediary service providers for the purpose, in particular, of detecting, identifying and addressing illegal content or information inconsistent with

¹file:///C:/Users/home/Downloads/Convention_ROM.pdf

²<https://www.echr.coe.int/documents/d/echr/annual-report-2024-eng>

³<https://eur-lex.europa.eu/legal-content/RO/TXT/PDF/?uri=CELEX:12016P/TXT>

⁴Regulation (EU) 2022/2065 of the European Parliament and of the Council of October 19, 2022 on a single market for digital services and amending Directive 2000/31/EC – The Digital Services Act (DSA)

⁵Chapter 1, Art. 3 - Definitions, lit. t

their general terms of use provided by recipients of the service, including measures taken that affect the availability, visibility and accessibility of such illegal content or information, such as downgrading, demonetization, blocking access to or removal of such content and information, or measures taken that affect the ability of recipients of the service to provide such information, such as closing or suspending the recipient's account.

In April 2025, the European Commission launched a €5 million call for proposals to strengthen the European fact-checking network¹. The call is open from April 15 to September 2, 2025 and aims: "to help promote a more reliable and safer online environment for European citizens. The initiative will strengthen the capacity of the community to verify the veracity of information across Europe, with the aim of ensuring availability in all EU Member States and in all official languages. It will build on, complement and extend the work of the European Digital Media Observatory (EDMO) and other key efforts such as the European Truth Verification Standards Network (EFCNSN)."

IV. National Approach

Article 30 of the Constitution of Romania - Freedom of expression as a fundamental right:

(1) The freedom of expression of thoughts, opinions or beliefs and the freedom of creations of any kind, by word of mouth, in writing, in images, sounds or other means of communication in public, are inviolable.

(2) Censorship of any kind is prohibited.

(3) Freedom of the press shall include freedom to establish publications.

(4) No publication may be suppressed.

(5) The law may require the mass media to make public the source of their funding.

(6) Freedom of expression may not be prejudicial to the dignity, honor, privacy or right to one's own image.

(7) Defamation of country and nation, incitement to war of aggression, national, racial, class or religious hatred, incitement to discrimination, territorial separatism or public violence, as well as obscene manifestations contrary to morality, are prohibited by law.

(8) The civil liability for the information or creation brought to public knowledge shall be borne by the publisher or producer, the author, the organizer of the artistic manifestation, the owner of the means of

¹<https://digital-strategy.ec.europa.eu/ro/news/commission-launches-eu5-million-call-strengthen-european-fact-checking-network>

reproduction, the radio or television station, under the conditions of the law. Press offenses shall be established by law.

The transposition of the DSA into Romanian law was realized by Law no. 50 of 2024¹, which establishes the coordinator of digital services, namely the National Authority for Administration and Regulation in Communications (ANCOM) and sets out the applicable sanctions for non-compliance by digital service providers.

The Audiovisual Law² has been amended and supplemented so that the National Audiovisual Council (CNA) has been given powers to supervise video-sharing platform services - a service whose main purpose or a severable part of it or an essential functionality of it is the provision of user-generated programs or video material, or both, to the general public for information, entertainment or educational purposes, for which the video-sharing platform provider has no editorial responsibility, via electronic communications networks.

CNA has developed a Practical Guide³ to fight illegal content online explaining how to report illegal content and what constitutes illegal content. It exemplifies that if a digital platform hosts illegal audiovisual content, such as incitement to violence, discrimination or violation of the protection of minors, CNA can issue a removal order.

Illegal content may constitute:

Content harmful to minors: Videos with excessive violence or that promote self-harm, sexually explicit or obscene content accessible to minors, dangerous provocations, use of drugs or banned substances, content that promotes eating disorders (e.g., anorexia), inappropriate exposure of minors in videos.

Hate speech or violence: Incitement to hatred based on gender, age, race, ethnicity, nationality, citizenship, religious beliefs, sexual orientation, level of education, social class, medical conditions or physical characteristics, promotion of physical or mental violence, direct threats to a person or group of persons, extremist (political, religious or ideological) or terrorist propaganda,

¹ Law No 50/2024 on establishing measures for the application of Regulation (EU) 2022/2.065 of the European Parliament and of the Council of October 19, 2022 on a single market for digital services and amending Directive 2000/31/EC (Digital Services Regulation), as well as amending and supplementing Law No 365/2002 on electronic commerce, published in the Official Monitor of Romania, Part I, No 232 of March 19, 2024

² Law no. 504/2002 - Audiovisual Law, published in the Official Journal of Romania, Part I, no. 534 of July 22, 2002

³ <https://www.cna.ro/IMG/pdf/COMBATERE-CONT-ILEGAL-ONLINE- GHID- PRACTIC CNA.pdf>

(e.g. extremist propaganda of a fascist, neo-Leftist or communist type or those glorifying totalitarian regimes or denying their crimes).

Hidden / misleading advertising: promotion of products without clear marking as sponsored advertising, advertising for prohibited products (alcohol, tobacco, gambling for minors), disguised advertising (e.g. in a message purporting to be entertainment), election advertising broadcast outside the election campaign period or without respecting the obligation to clearly mark election advertising.

Violation of privacy: publication of personal data without consent (e.g. addresses, phone numbers), videos taken without consent in private spaces, online harassment (e.g. bullying, negative public exposure).

Misinformation and manipulation of information online: distribution of false or misleading information about public health, elections, social crises, economic/banking crises, etc. in order to induce panic or influence public opinion, manipulation through misleading video and or audio editing (e.g. deep fake) that changes the context of an event in order to induce panic or influence public opinion, coordinated disinformation strategies through fake accounts, bots or organized networks that artificially amplify certain messages, conspiracy theories proven false, deliberately promoted to induce confusion or distrust of democratic institutions.

Content prohibited by other laws: child pornography, sale of banned products (e.g. drugs, weapons, medicines, counterfeit), public incitement to crime (e.g. promotion of violence, terrorism), racist or xenophobic content.

Examples of social media platforms whose content can be monitored/moderated include Facebook, Instagram, TikTok, "X" - where posts, images and videos can be distributed quickly and have a major impact.

CNA has already ordered the removal of content considered harmful and the closure of accounts on these networks by issuing decisions to this effect.

At one point, the CNA justified the removal of audiovisual material belonging to a well-known journalist as illegal content and invoked the ECHR decision in Case Lingens vs Austria.¹

It is only by looking at the case relied on, handed down in 1986², that we can see that in its judgment, the Court found against Mr. Lingens that the Vienna Court of Appeal had committed a violation of Article 10 of the Convention, holding in recital 47 that "it follows from the various considerations above that the interference with Mr. Lingens' exercise of his freedom of expression was not

¹ <https://www.cna.ro/article13893,13893.html>

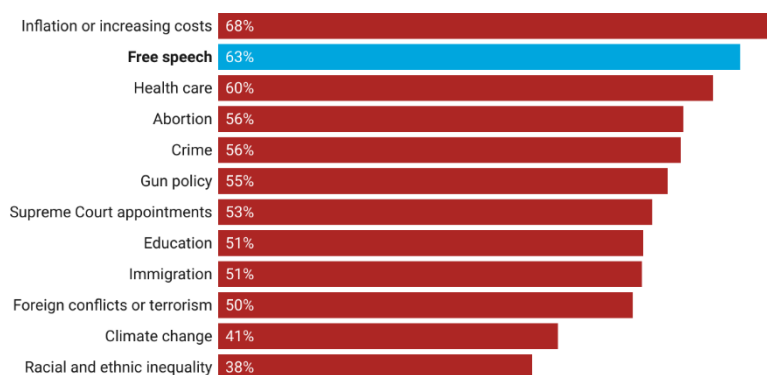
² [https://hudoc.echr.coe.int/rum#{%22languageisocode%22:\[%22ENG%22\],%22appno%22:\[%229815/82%22\],%22documentcollectionid%22:\[%22CHAMBER%22\],%22itemid%22:\[%22001-57523%22\]}](https://hudoc.echr.coe.int/rum#{%22languageisocode%22:[%22ENG%22],%22appno%22:[%229815/82%22],%22documentcollectionid%22:[%22CHAMBER%22],%22itemid%22:[%22001-57523%22]})

'necessary in a democratic society ... for the protection of the reputation ... of others'; it was disproportionate to the legitimate aim pursued. There was therefore a violation of Article 10 (art. 10) of the Convention".¹

V. Censorship of Information - Practical Aspects

A survey conducted by the FIRE Foundation (Fights For Your Rights an Expression)² and published in October 2024 (conducted October 11-14, 2024), found that freedom of expression is a major concern for the American citizens surveyed, second only to concerns about inflation and living standards, but ahead of issues such as immigration, crime and healthcare. As a result, 63% of those surveyed considered freedom of expression to be very important and did not trust political leadership to respect this fundamental right.

63% of Americans indicate that free speech is "very important"



Question: How important, if at all, are each of the following issues in making your decision about who to vote for in the 2024 Presidential election? **Notes:** Percents are those who selected "very important." Poll fielded October 11-14, 2024. N=1022.

Chart: Nathan Honeycutt • Source: FIRE / NORC • Created with Datawrapper

As mentioned in Chapter I, the organization Reporters Without Borders (RWB/RSF)³ has also published its 2024 index on press freedom. The index is based on five criteria:

- *The political indicator* assesses the degree of support and respect for media autonomy, as opposed to political pressure from the state or other political actors.

¹ Mr. Lingens was a journalist and had made a series of remarks about a former Austrian chancellor, which the Austrian judiciary considered to have harmed the honor and dignity of the former Austrian chancellor.

² <https://www.thefire.org/news/poll-free-speech-top-concern-americans-2024-more-important-crime-immigration-and-health-care>

³ Non-profit organization working for journalists' freedom of expression, independence and pluralism. <https://rsf.org/en/who-are-we#rsf-is-2846>

– *The economic indicator* assesses economic constraints related to government policies, non-state actors (advertisers and commercial partners) and media owners.

– *The legal indicator* assesses the legal and regulatory environment for journalists (including the level of censorship, the ability to protect sources and the level of impunity for violence against journalists).

– *The socio-cultural indicator* assesses the impact of social and cultural constraints (derived from issues such as gender, class, ethnicity and religion) that obstruct journalistic freedom and encourage self-censorship.

– *The safety indicator* assesses the ability to identify, gather and disseminate journalistic news and information without unnecessary risk of physical, psychological or professional harm.

The overall score is 100 points, with Norway, Denmark and Sweden in the top three positions for press freedom. Romania ranked 49th, the USA 55th and Russia ranked last - 180th¹.

At a global level, the index's analysis reveals that press freedom is under political pressure, threatened by the very people who should be its guarantors - political authorities, governments, increasingly failing to protect journalism.

Compared to the index in 2024, in 2025, the top three positions in terms of press freedom are Norway, Estonia and the Netherlands, Romania in 55th place, the USA in 57th place, both decreasing, and Russia in 171st place - up from the previous year.²

VI. Conclusions

The tandem approach of guaranteeing freedom of expression and preventing the manipulation of information and disinformation is essential in the evolution of a democratic society. It is a fact of our times that technology is evolving at a rapid pace and that threats are increasingly diverse and surprising, but this should not be a pretext for unjustified censorship, particularly in the digital environment.

We can see that there are sufficient safeguards to respect freedom of expression and the right to information. However, the adoption of the DSA leaves room for interpretation regarding content moderation. The regulation contains clarifications regarding illegal content and the conditions for removal, but as regards information incompatible with the general conditions of use of digital platforms, there is room for arbitrariness and biased reporting by other users.

¹ <https://rsf.org/en/index?year=2024>

² <https://rsf.org/en/index>

The new provisions have also generated differing opinions among lawyers and journalists, as they are seen as generating censorship and restricting freedom of expression.

Politicians believe that these provisions and the use of these checkers may be a way of censoring the opinions of political opponents.

Combating disinformation is a desirable objective, but we believe that it must be done in a judicious way, so that interference with freedom of expression is proportionate and necessary in a democratic society.

Citizens have the right to information, which they can access from different sources and have access to different points of view in order to form their own opinion. When information appears that contradicts the point of view of the institutions or is not factual, we believe that it is through the prompt intervention of the institutions concerned, communicating the real information, that disinformation can be combated, and not necessarily by censoring opinions.

At the same time, at national level, we are of the opinion that what constitutes illegal content should be determined by a normative act and not by guidelines issued by administrative authorities, in order to ensure compliance with Article 53 of the Romanian Constitution.¹

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¹Art. 53 - Restrictions on the exercise of rights or freedoms

(1) The exercise of certain rights or freedoms may be restricted only by law and only if necessary, as the case may be, for the protection of national security, public order, public health or morals, or of the rights and freedoms of citizens; the conduct of criminal investigations; the prevention of the consequences of a natural calamity, disaster or particularly serious loss.

(2) Restraint may be ordered only if necessary in a democratic society. The measure must be proportionate to the situation which has given rise to it, applied in a non-discriminatory manner and without prejudice to the existence of the right or freedom.

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CONSIDERATIONS REGARDING THE PRIVACY AND PROTECTION OF PERSONAL DATA IN THE CONTEXT OF CREATING THE EUROPEAN HEALTH DATA SPACE

Maria - Iuliana Cebuc¹

Abstract.

Health represents an essential element of people's wellbeing; consequently, ensuring the right to health represents a priority for policies developed at EU level.

EU Regulation 2025/327 on the European Health Data Space establishes an innovative legal and technical framework, creating a common platform for storing this category of data. As such, the Regulation seeks to enhance individuals' control over their own medical data and records by allowing them to access, control and share these with healthcare professionals even across borders, thereby simultaneously facilitating patients' access to medical treatment. Additionally, the European Health Data Space will enable the secondary use of health data for research, innovation, policymaking, and regulatory activities. To strike a balance between leveraging the scientific potential of data and protecting fundamental rights, the secondary use of data is safeguarded by strict rules.

Starting from an analysis of the concept of medical data, this article examines the legal tools and mechanisms established to enable the secondary use of health data, including issues related to patient consent, aspects left to the discretion of Member States, and cross-border data transfers.

Keywords: *European health data space, electronic health file; protection of private life; protection of personal data; medical data and information; the patient's consent*

JEL Classification: *I11, I12, K15, K32, K380*

1. Introduction

Public health has long been one of the areas of concern for the European Union (EU), but the recent health crisis has created a substantial additional political impetus for a Health Union in the EU. The need to be better prepared for future health challenges, the benefits of EU-level information sharing and research during a pandemic, and the success of cooperation in developing digital tools at European level have been key drivers for increasing the level of integration in the field of health at EU level (Marcus, Martens, Carugati, Bucher, & Godlovitch, 2022).

In this context, the adoption of Regulation (EU) 2025/327 on the European Health Data Space (EHDS) establishes an innovative technical and legal framework to make electronic health data available for re-use for

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various purposes, including research, while establishing the legal framework to protect individuals' fundamental rights in the context of health data use.

The creation of the EHDS marks a strategic step towards harnessing health data in the European Union, imposing strict rules for the protection of privacy in light of the sensitive nature of the data being processed.

The novelty of this legislation lies in at least the following two aspects:

1. The electronic health data that will be made available for re-use includes both data held by public sector bodies and by private sector organisations; consequently, private operators will also be obliged to disclose certain electronic health data to third parties for re-use;

2. Data recipients (called data users) are permitted to use health data for a range of purposes, including *inter alia* product development research, artificial intelligence (AI) training, and personalized healthcare

The EHDS aims to satisfy two essential needs:

(a) Enable patients to access, control, and share their electronic health data across borders for the provision of healthcare (**primary use of data**): They will have control over their health data, immediate and free access to their electronic health data, and the capacity to share this information with healthcare providers in other countries. The EHDS will also allow patients to add information to their files, correct errors, and monitor who accesses their data, while seeking to guarantee privacy through strict security measures.

(b) Enable safe and trustworthy re-use of health data for research, innovation, policy-making and regulatory activities (**secondary use of data**).

2. The legal framework for the protection of health data

The digitalization of health services has made it necessary to establish a harmonized legal framework for data protection. Of high importance is firstly the harmonization of European legislation, particularly between the provisions of the General Data Protection Regulation (GDPR) with the provisions of the EHDS and Article 8 of the Charter of Fundamental Rights of the European Union and secondly, the harmonization with national legislation in certain aspects.

At the European level, the interaction between the three instruments is essential for guaranteeing the protection of fundamental rights, especially for the secondary use of health data for the purposes of ensuring innovation in health.

In their common domains, the EHDS does not replace the GDPR, but rather complements it in guaranteeing fundamental rights in the context of digitalization in health, offering a sector-specific framework, with rules that are more detailed and more adapted to the particularities of health data.

This article will highlight the issues of convergence, complementarity, and the responsibilities of health data controllers.

Table 1. Comparative table: GDPR vs EHDS

Domain	GDPR (Reg. 2016/679)	EHDS (Reg. 2025/327)
Application domain	General, all personal data	Specific, only for health data
Consent	Generally needed, with well-defined exceptions	Not required for secondary use, if anonymization/pseudonymization conditions are respected
Rights of the individual	Access, rectification, erasure, processing restriction, data portability, object, not be subject to a decision based solely on automated processing	Includes rights set out by the GDPR + the right to ‘opt out’ of secondary use
Authorities involved	Data protection authorities (ex: ANSPDCP)	Health data access bodies (HDAB) + cooperation with data protection authorities
International transfer	Permitted with the appropriate safeguards	Subject to stricter conditions, including the control of sensitive data
Protection mechanisms	Pseudonymization, security, audit	Controlled access, dedicated platforms, access logs

3. Health data – a special category of data

The GDPR classifies health data as a special category of data, thus requiring a higher level of data protection. (EU, 2016) EHDS builds onto this principle, introducing control mechanisms such as authorization, anonymization, and limiting the usage scope.

As per Article 4(15) GDPR, ‘data concerning health means personal data relating to the physical or mental health of a natural person, including the provision of health care services, which reveal information about his or her health status’.

Electronic health data is defined under Article 2(2) EHDS, which distinguishes between personal and non-personal electronic health data. Personal electronic health data is defined as ‘data concerning health and genetic data, processed in an electronic form’ (EU, 2025), while non-personal electronic health data represents ‘electronic health data other than personal electronic health data, including both data that have been anonymized so that they no longer relate to an identified or identifiable natural person (the ‘data subject’) and data that have never related to a data subject.’ (EU, 2025)’

It can be observed that, under the EHDS, the concept of health data obtains a wider scope than under the GDPR.

4. Data confidentiality under the EHDS

Under the EHDS, data confidentiality represents the legal and ethical obligation to protect personal health information against unauthorized access, disclosure, or use. Ensuring confidentiality does not require solely technical measures, but also clear rules for governance and responsibility. As such, EHDS strengthens this characteristic through:

a) Setting out the categories of electronic health data for secondary use; (EU, 2025)

b) Requiring the pseudonymization or anonymization of data for secondary use; (EU, 2025)

c) Prohibiting the re-identification of individuals from pseudonymized data; (EU, 2025)

d) Mandating the use of secured processing environments for data access; (EU, 2025)

e) Mandatory logs, allowing for the registration and audit of any data access; (EU, 2025)

f) Prior authorization of data access requests through national health data access bodies (HDAB); (EU, 2025)

g) Requiring compliance with the principles of necessity and proportionality in processing. (EU, 2025)

These guarantees transform confidentiality into an essential element of the EHDS, without which the rights of data subjects could not be effectively guaranteed. The Regulation provides that all data used for secondary purposes must be anonymized or at least pseudonymized. Users cannot re-identify data subjects, and any access is monitored through secure digital platforms with mandatory logs.

5. Rights of the data subject

International data transfers are allowed under the EHDS, subject to strictly regulated conditions ensuring consistency between data protection and the EHDS objectives related to responsible access and secondary use of data in the European and international space. These conditions concern the compliance with GDPR provisions related to adequate safeguards, the assessment of risks related to the reidentification or misuse of data, the explicit approval of the transfer requests by HDABs, the prohibition of transfer of highly sensitive data (with the exception of cases where a specific delegated act or international agreement is in place), and the obligation to use secure digital environments for any remote accessing or processing.

Both the GDPR and the EHDS guarantee data subjects the right to access, rectify, erase, restrict processing, and portability of data. The content of some rights is regulated by the GDPR; for others, the EHDS adds new provisions to support both individual rights and health innovation.

The right to access allows complete access to personal electronic health data, regardless of where in the EU they were generated. (EU, 2016) (EU, 2025)

The right to rectification presupposes that the subject may correct inaccurate or incomplete data (EU, 2016).

The right to erasure implies the possibility of erasures when the data is no longer needed, or pursuant to consent withdrawal, where applicable. (EU, 2016)

The right to restriction of processing entails the limiting of use of data under certain conditions (e.g. to challenge accuracy). (EU, 2016)

The right to portability enables the transfer of data between healthcare providers or compatible systems. (EU, 2016) (EU, 2025)

The right to object implies a refusal to process data for specific purposes, except for those that are legally justified. (EU, 2016) (EU, 2025)

Data subjects also enjoy **the right to be informed**, according to which persons must be clearly and accessibly informed of the collection and processing of their data, (EU, 2016) (EU, 2025) and **the right to lodge a complaint** to the competent national authority or EHDS authority of their rights have been breached. (EU, 2016) (EU, 2025)

The EHDS also introduces a specific mechanism, **the right to opt-out**, allowing the data subject to refuse secondary use of their electronic health data by declaring, through a regulated national procedure, that they do not wish for their data to be used for purposes such as scientific research, innovation, or the development of public policies. The opt-out is not applicable where an overriding public interest exists (e.g. epidemic

management) and Member States are free to define the exact procedure for exercising this right (forms, deadlines, revocation, etc.). (EU, 2025)

Table 2. Right of the data subject: GDPR vs. EHDS

Right	Legal basis GDPR	Legal basis EHDS	Observations
Data access	Art. 15 GDPR	Art. 3, 38 EHDS	Extended to electronic files in all EU Member States
Rectification	Art. 16 GDPR	-	Applicable to all EHDS platforms
Deletion	Art. 17 GDPR	-	Limited for data utilized for a major public interest
Restriction	Art. 18 GDPR	-	Temporarily applicable in contested cases
Portability	Art. 20 GDPR	Art. 14, 40 EHDS	Supported by standardized EHR formats
Opposition	Art. 21 GDPR	Art. 43 EHDS	Available <i>inter alia</i> for automated processing
Opt-out	-	Art. 39–44 EHDS	Specific to secondary use of data
Information	Art. 13–14 GDPR	Art. 38 EHDS	Mandatory before any reuse of data
Lodging a complaint	Art. 77 GDPR	Art. 52 EHDS	To the HDAB and data protection authorities

6. Rules for the secondary use of electronic health data

Secondary use of electronic health data is regulated in Chapter IV, Articles 50-88 EHDS, setting out the new legal framework in which three types of actors will be involved: health data holders ('data holders'), health data access bodies ('HDAB') and health data users ('data users'). According to these rules, 'data holders' must make available a wide range of specified categories of electronic health data for secondary use by third parties, called 'data users', under the supervision of the HDABs.

Article 50 defines health data holders (entities owning or administering electronic health data) and health data users (entities requesting access to such data for secondary use). Data holders are not, for the purposes of the EHDS Regulation, limited to the scope of healthcare establishments holding health records, but also cover establishments holding mortality records, clinical trial data or health data from wellness applications.

Access bodies decide on health data access requests under Article 67 of the Regulation, and subsequently authorise and issue data permits under Article 68 of the Regulation to access electronic health data under their competence for secondary use. Each EU Member State will have to designate one or more HDABs. The permitted purposes for secondary use are set out, including scientific research, public policy making, official statistics and other activities of public interest (Article 51), as well as the procedure for requesting access to data, including the requirements for access requests and their assessment by the HDAB, and the conditions for authorising access to the data, including the assessment criteria and the terms of the authorisation. Article 60 also regulates the obligations of data holders as regards the provision of authorised data and the maintenance of their quality. Data controllers must demonstrate compliance with the Regulation and cooperate with the competent authorities.

Data protection measures are established, including anonymisation or pseudonymisation requirements and the prohibition of re-identification of individuals, but also sanctions and corrective measures in case of non-compliance with the provisions of the Regulation.

Identified risk	Instituted protection measure
Re-identification of the individual	Mandatory pseudonymization/anonymization; prohibition of reidentification
Unauthorised data access	Access is done only through secured platforms, with mandatory audit logs
Use for commercial purposes (e.g. marketing)	Explicit legal prohibition; prior verification of the purpose of access
Lack of consent for secondary use	Prior information and the right to opt-out
Data leaks	Obligation of immediate notification and periodic security audits

7. The legal basis for secondary use

Under its Articles 9(2)(i) and 9(2)(j), the GDPR allows the processing of health data without explicit consent, where the purpose of the processing is the public interest or scientific research and where it is proportionate to the objective pursued.

In these cases, the EHDS does not require patients' consent for the processing of health data for secondary use, but recognises the application of other grounds, including legal obligation or legitimate interest. Moreover, for uniform application, the EHDS does not allow Member States to introduce specific consent requirements for secondary use of health data.

Thus, health data can be used without the explicit consent of the data subject for purposes such as: scientific research, health policies, statistics, safety of medicines and medical devices, or medical training.

This derogation from the consent requirement is only allowed if the conditions relating to pseudonymisation or anonymisation of data are fulfilled, the purposes are clearly defined and compatible with the public interest, the establishment of strict security and confidentiality safeguards are respected, and the data subject has not exercised the right of opt-out under Articles 39-44 EHDS.

8. Conclusions

Privacy and data protection in the EHDS is not only a formal principle, but a fundamental pillar for trust in the digitalisation of the European health system. By combining technical requirements with strong regulations, the EHDS creates a robust governance framework to protect sensitive data.

Member States are responsible for translating these standards into consistent practices and data controllers must adopt a proactive compliance culture. The success of the EHDS will depend on the quality of data interoperability, transparency of processes, and efficiency of control and audit mechanisms.

Finally, data protection in the EHDS is not only a legal obligation, but also an essential condition for the sustainability of innovation in health, respect for human dignity and strengthening European digital sovereignty. The EHDS provides a strong legal architecture to protect privacy in the digital medical age. However, its success depends on coherent implementation in the Member States and the commitment of all actors involved to respect the fundamental rights of the individual.

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STATE AID MANAGEMENT OPTIMIZATION IN ROMANIA AND THE POTENTIAL OF ARTIFICIAL INTELLIGENCE (AI)

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Abstract:

State aid is an essential instrument for supporting the economy and promoting competitiveness within the European Union. It plays a crucial role in correcting market failures, stimulating innovation, and supporting economic development in less developed regions. At the same time, state aid is strictly regulated by European legislation to prevent undue market distortions and ensure fair competition among member states. The European Commission monitors national state aid expenditures annually through the State Aid Scoreboard.

This article analyzes the state aid system in the EU and Romania, highlighting recent trends, administrative challenges, and reform opportunities. It identifies administrative and compliance challenges in Romania (fragmented policies, limited institutional capacity, reduced transparency) and presents examples of best practices – block exemptions, green schemes, digitalization, and EU co-financing. Finally, it discusses the potential of artificial intelligence in state aid management (automated decision-making, predictive analysis for detecting market imbalances), in line with the provisions of the EU White Paper on AI (2020), which promotes the use of artificial intelligence in public administration, enabling automated procedures and predictive data analysis to improve state aid management.

Introduction

In the European Union, state aid is strictly regulated by the Treaty on the Functioning of the European Union (Article 107 and 108 of the Treaty) and targets selective national measures to support businesses. The goal of EU rules is to prevent market distortions while allowing public policies (e.g., research or regional development) that are considered economically advantageous. In practice, member states report state aid expenditures annually to the European Commission, which analyzes them in the State Aid Scoreboard. For instance, in 2022 (reported in 2023), EU member states allocated approximately €228 billion (1.4% of the EU's GDP) for all forms of state aid. This volume represents a significant reduction (–34.8%) compared to 2021, due to the phasing out of COVID-19 crisis measures. However, the distribution of expenditures between countries remains significant: in 2022, the highest spending was around 2.1% of GDP (e.g., Hungary), while the lowest was around 0.3% (e.g., Ireland) (ec.europa.eu).

In Romania, the level of state aid is below the European average. According to a recent analysis, Romania spent approximately 0.54% of GDP on

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state aid in 2018 (compared to the EU28 average of 0.76%). Romania predominantly grants aid for regional development (more than twice the EU average) and allocates relatively less for research and innovation and sectoral development. Direct grants represent over 40% of the total state aid, in line with EU rules (documents1.worldbank.org). These data illustrate the general context in which Romania manages state aid policies, against the backdrop of strict European regulations.

Statistical Analysis

According to the latest data from the State Aid Scoreboard, in 2023 Romania allocated state aid at approximately 0.8% of GDP. The following table presents a comparative overview of state aid as a percentage of GDP for 10 selected EU countries in 2023. It shows that Romania ($\approx 0.8\%$) is below the EU average (1.09%), significantly behind countries like Hungary ($\approx 2.6\%$) and Croatia ($\approx 1.9\%$), but ahead of countries like Bulgaria ($\approx 0.4\%$) or Ireland ($\approx 0.3\%$). Germany and France, although major contributors in absolute terms, have moderate GDP shares ($\approx 1.1\%$ and $\approx 1.2\%$, respectively), while Italy and Poland remain below 1.0%. These figures indicate that Romania remains a relatively cautious spender but also that there is potential to increase public support in certain strategic areas.

At the EU level, the overall trend is downward following the peak of the pandemic crisis. Thus, total state aid expenditures for 2023 were approximately €186.78 billion (1.09% of GDP), down by 23% compared to 2022 (€243.27 billion). Only 27% of this aid in 2023 represented exceptional crisis measures (COVID-19 and Ukraine), with the remaining 73% allocated to non-crisis objectives.

For Romania, the relatively low figure largely reflects the scaling down of post-COVID programs and a cautious approach to industrial support. At the same time, cooperation with EU funds has been significant: national spending on EU co-financed projects increased substantially in 2023 (from €15.5 billion to approximately €21.7 billion) (competition-policy.ec.europa.eu), indicating alignment with European priorities.

Table 1: State Aid as a Percentage of GDP (2023) for Selected EU Countries (source: European Commission, State Aid Scoreboard; values are approximate, based on reported distribution).

Challenges in State Aid Administration in Romania

Managing state aid in Romania faces several administrative challenges. Although national legislation (Government Decision no. 77/2014) transposes EU rules, implementation is often fragmented: various ministries or local authorities can propose aid schemes, leading to overlaps or delays in application. Institutional capacity is limited – the Competition Council, although the sole coordinating body, lacks sufficient resources to evaluate

complex schemes. Moreover, bureaucratic procedures and notification delays can hinder swift decisions by the European Commission. An example is the limited focus on monitoring and evaluating the real impact of aid measures.

In terms of transparency, legal provisions require the publication of aid registries and annual reports, but this information is not always easily accessible or up to date. The World Bank notes that, although rules for aid inventories and financial transparency have been adopted, the data is often partial or unconsolidated. Therefore, improving decision-making transparency remains a key objective. Although the Competition Council has intensified its approval activity (the number of issued opinions increased significantly at a number of 115 in 2019) (documents1.worldbank.org), administrative challenges persist. Efforts are needed to digitalize internal processes, clarify responsibilities, and strengthen institutional capacity to ensure compliance with EU standards.

Opportunities and Best Practices

Despite these challenges, Romania can leverage some positive trends. First, the use of block exemptions (e.g., General Block Exemption Regulation - GBER, Agricultural Block Exemption Regulation - ABER, Fishery Block Exemption Regulation - FIBER) offers an efficient support mechanism without lengthy notifications. In 2022, EU member states implemented approximately 1,901 new measures under GBER and 284 under ABER, accounting for 84% of all new aid measures. In Romania, this instrument has encouraged the provision of small and medium-sized grants (e.g., support for SMEs, environmental projects, or digitalization) without direct intervention from the European Commission.

Second, the focus on green and digital schemes aligns with EU objectives. The European Commission has recommended that member states prioritize aid for investments in energy efficiency, renewables, green transition, or digital infrastructure. The Scoreboard shows that in 2022, approximately 37% of non-crisis EU aid was for environmental protection and energy savings (41.5 billion EUR) (ec.europa.eu), although this level was lower than the previous year. Romania can intensify funding for "green" projects (e.g., grants for photovoltaic power plants or ECO certification cost compensation) and "digital" projects (e.g., broadband networks, IT startups) through GBER-compatible schemes, maximizing impact with reduced implementation costs.

Overall, combining these best practices with the digitalization of management processes (e.g., online submission and reporting of projects) can lead to a more efficient allocation of resources. To support businesses, Romania can also promote a more intensive use of EU funds through feedback-type schemes with the Commission (for example, participation in the European Competition Network or official networks for experience exchange on GBER).

Potential of Artificial Intelligence

Artificial intelligence (AI) can significantly transform the process of granting, evaluating, and monitoring state aid. According to the EU White Paper on AI (European Commission, 2020), public authorities are encouraged to use e-government solutions and advanced analytics. In the context of state aid, AI could automate repetitive tasks (e.g., pre-evaluation, project scoring, application processing, absorption level assessments) and improve decision-making. Global examples already demonstrate that governments use chatbots for automated services and predictive analytics to anticipate citizen needs (blog.govnet.co.uk).

Currently, e-government in Romania has modest performance. According to the DESI 2021 report, the country ranks last in the EU in terms of digitalization of public services (commission.europa.eu). The overall score (approximately 41.8) is significantly below the EU average, and relevant indicators are unfavorable. For instance, in the dimension of digital public services, Romania scores only 44 points, while the EU average is 75. These figures are reflected in citizen behavior: only 17% of Romanian internet users use online public services, compared to around 71% in the EU (conference.management.ase.ro).

The current situation reflects a series of systemic deficiencies. Government IT systems are fragmented and non-interoperable: different platforms (at both central and local levels) do not communicate with each other and are not integrated into automated workflows (commission.europa.eu, oecd.org). In practice, many procedures remain paper-based, and bureaucratic processes are not fully digitalized. The coordination of these initiatives is weak, resulting in duplicative and unaligned efforts among different institutions (oecd.org). Moreover, the human resources dedicated to digitalization are insufficient: digital skills among public sector employees are lacking, and the number of IT specialists in administration is too low to maintain robust and accessible systems (commission.europa.eu). As a result, the accessibility of digital services is reduced – online applications are often unintuitive or inaccessible to people without advanced IT skills.

Technical and managerial deficiencies have concrete effects on state aid management. Manual procedures and inefficient systems cause significant delays in funding application approvals, generate various administrative errors, and even introduce redundant procedural steps. Fragmented digital bureaucracy particularly discourages the participation of SMEs, which are less willing to invest in meeting complex electronic requirements. In addition, the reduced transparency of digital processes can erode trust in institutions: studies show that the general level of public trust in government and its ability to manage personal data is low (oecd.org). All these aspects negatively impact the

efficiency and attractiveness of support programs, leading to overlaps in responsibilities and dissatisfaction among beneficiaries.

An illustrative example is a government program for SMEs launched in 2021, which was canceled after public concerns were raised about vulnerabilities in its online registration platform. This incident – widely covered at the time – highlighted the risks associated with incomplete digital implementation and underscored the need to strengthen IT infrastructure and security procedures in public administration. Such situations demonstrate that a lack of coherence and security in the digitalization of public services can undermine the credibility and proper functioning of state aid schemes, delaying support for businesses and increasing the perceived risk associated with their implementation.

Such technologies can also be adapted for analyzing large economic data sets: for instance, machine learning algorithms can identify sectors with below-median performance, suggesting the need for targeted support schemes. Additionally, AI systems can monitor real-time spending, detecting irregularities or breaches of funding conditions. Another potential use case is the automation of initial decision-making, where an AI system can filter applications that meet formal criteria, freeing human resources for complex files or impact studies.

International case studies show that chatbot automation improves public services (e.g., Singapore implemented virtual assistants that reduced call center requests by 50%, while predictive analytics can optimize resources (e.g., AI applications in traffic management or allergen control)). In Romania, the use of AI in state aid would involve developing automated impact assessment tools and predictive models based on historical data (budgets, return rates, etc.). So far, these technologies are rare in Romanian administration, but national digitalization projects and EU funds dedicated to digital transformation can be directed toward such innovations. In conclusion, AI integration can enhance the efficiency and transparency of state aid management, supporting both the measure selection process and the monitoring of their implementation (blog.govnet.co.uk, competition-policy.ec.europa.eu).

Conclusions and Recommendations

The integrated framework for state aid management in Romania is, in principle, aligned with European standards, but its effectiveness can be improved in multiple areas. Statistical data show a moderate involvement of Romania in financing the economy (approximately 0.8% of GDP in 2023), placing it below the EU average (competition-policy.ec.europa.eu).

A potential solution is institutional consolidation through the expansion of resources (training, hiring experts) and the simplification of notification and reporting procedures through unified electronic platforms. In terms of policies,

it is appropriate to continue focusing on strategic European objectives – environment, digitalization, innovation – and to expand EU co-financing mechanisms. Additionally, we encourage the study and integration of artificial intelligence solutions in the administrative process, such as developing automated tools for application analysis and state aid impact assessment, as well as applying predictive analytics for prioritizing public support.

Such a data-driven approach – using predictive analytics and artificial intelligence to optimize fund allocation and improve decision-making transparency – can increase policy effectiveness while ensuring transparency and accountability. Overall, the reform of state aid management in Romania should promote collaboration between administrative levels and leverage emerging technologies, ensuring that public support generates optimal economic and social impact.

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PRACTICAL ASPECTS OF OCCUPATIONAL SAFETY

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Summary

Any workplace, as defined by law, must guarantee the safety and health of employees. However, there are aspects in the framework law on occupational safety and health that, being unclear, determine its uneven application by practitioners in the field.

Thus, if we refer only to the dangerous incident, this is an identifiable event, such as an explosion, fire, breakdown, technical accident, major emissions of noxious substances, resulting from the malfunction of an activity or work equipment or/and from the inappropriate behavior of the human factor that did not affect the workers, but could have.

Therefore, if the event does not involve work equipment or the malfunction of an activity, is this event no longer dangerous for workers? Also, the legislator does not clearly state whether the human factor belongs to the internal or external environment, leaving it to the discretion of practitioners, on a case-by-case basis.

Keywords: worker, accident, activity, employer, incident.

The term "organized workplace" has two main meanings, according to the context:

In a legal sense, in Romanian labor law, the expression refers to the place of work established by the employer. Thus, the individual employment contract must specify whether the employee works at the company's headquarters, within a specific department or workshop, or in another "place organized" by the employer - for example, a branch, a work point, or even at home, in the case of teleworking. If the employee has a fixed place, the section/workshop and address are listed. If the workplace is mobile or works in several places, this aspect is explicitly included.

In an operational / ergonomic sense, in human resources management and ergonomics, an "organized workplace" refers to the efficient arrangement of the workspace:

- a clean, tidy and well-structured environment, with clear areas for documents, tools or production, so that you do not waste time searching and reduce stress;
- adherence to ergonomic principles: suitable furniture, adequate lighting, healthy posture to reduce fatigue and health risks;
- an inspiring and functional space, with moderate customization (plants, accessories, organizational systems), which facilitates concentration, efficiency and creativity.

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The workplace is defined by the Labor Code in art. 16 paragraph (4) as follows: the workplace is the place where the employee carries out his activity, located within the perimeter provided by the employer, a natural or legal person, at the main headquarters or at branches, representations, agencies or work points belonging to it, and which must guarantee the safety and health of employees.

Also, according to art. 5 letter k) of Law no. 319/2006 on occupational safety and health, the workplace is the place intended to contain work stations, located in the buildings of the enterprise and/or unit, including any other place in the area of the enterprise and/or unit to which the worker has access in the course of carrying out the activity.

However, there are, in Law no. 108 of 1999 for the establishment and organization of the Labor Inspection Republished in the Official Gazette, Part I no. 740 of 10 October 2002, aspects that, not being clarified, determine an uneven application of this law by practitioners in the field.

According to Article 19 paragraph (1) of the aforementioned normative act, "labor inspectors have the following rights:

- a) to have free access, permanently and without prior notice, to the headquarters of the legal entity and to any other workplace organized by it;

- j) to enter all places where work is carried out that involves risks to the safety and health of workers".

At the same time, unauthorized access to private property is regulated by criminal law, mainly through the crime of trespassing. This is punishable by imprisonment from 6 months to 3 years or a fine, depending on the circumstances. The warrant of arrest, issued by judicial bodies, can legitimize entry into private property under certain conditions, in order to bring a person to the criminal investigation bodies or court.

Therefore, if the criminal law requires criminal investigation bodies to obtain a warrant to enter the property of a natural or legal person, in the case of labor inspectors this warrant is not necessary, as only the suspicion of carrying out work that involves risks to the safety and health of workers or of an activity performed by natural persons who have not been legally concluded employment contracts is sufficient.

According to the Criminal Code, trespassing involves entering, without right, a home or premises, with or without the consent of the person who has the right to use it, while labor legislation does not criminalize this act.

In practice, there have been cases in which criminal investigation bodies, hampered by the procedure for obtaining a warrant necessary to enter the property of certain persons, have delayed access to those properties, which led to serious crimes that targeted the lives or bodily integrity of the victims.

Fortunately, the Code of Criminal Procedure in force provides for the possibility of exceptional or “immediate” searches in serious situations - for example, crimes of murder, human trafficking, sexual violence, etc. - for which a prior warrant is no longer required, but a subsequent one (art. 141-142 Code of Criminal Procedure). These exceptions were created precisely to avoid delays that could endanger the lives and health of victims. Moreover, the existence of this mechanism suggests that precedents with deaths or serious injuries would have been possible, otherwise an explicit derogation would not have been created.

In conclusion, while labor inspectors can enter a person's property, unrestrictedly and without prior notice, simply because there is suspicion of carrying out work that involves risks to the safety and health of workers or of the employer using people without first concluding individual employment contracts with them, legally, in the case of criminal prosecution bodies - where there are much more serious suspicions, such as the life or integrity of the person - they need a search warrant.

This conclusion highlights an apparent disproportion between the legal powers of labor inspectors and those of criminal prosecution bodies, underlining a paradoxical situation:

Labor inspectors can enter a person's property without restriction and without prior notice, based on suspicion of irregularities regarding work safety or undeclared work – administrative, albeit important, issues.

In contrast, criminal prosecution bodies, which handle serious crimes that may involve the life or physical integrity of a person, must follow a stricter procedure, requiring a search warrant issued by a judge.

However, this difference is not necessarily a gap, but reflects the different nature of the attributions and the specific legal framework of each institution.

The Labor Inspectorate has administrative control attributions and operates in a quasi-preventive regime, being regulated by Law no. 108/1999 and the Labor Code, which gives them extensive powers in the field.

Instead, criminal authorities act in a repressive context, with potentially more severe consequences (restriction of freedom), which requires additional guarantees for the fundamental rights of the person, according to the Romanian Constitution and the Code of Criminal Procedure.

In our opinion, these legal provisions should be correlated proportionally with the degree of social danger of the act.

This is a delicate and important issue related to the balance between the fundamental rights of the person (especially the right to the inviolability of the home and private property) and the public interest (such as the protection of life, health and rights of other persons, such as workers).

Another controversy is related to the dangerous incident. Until the 20th century, accidents and dangerous incidents were rarely documented or analyzed scientifically, there being no clear distinction between an “incident” and an “accident”. With industrialization and the increase in the number of work accidents, the need for regulation arises.

After World War II, as a result of the development of safety standards, the term "dangerous incident" began to be used as an event that could have caused an accident, even if no one was injured, introducing the concept of "potential incident".

According to art. 5 letter o) of Law no. 319/2006 on occupational safety and health, a dangerous incident is an identifiable event, such as an explosion, fire, breakdown, technical accident, major emissions of noxious substances, resulting from the malfunction of an activity or work equipment or/and from the inappropriate behavior of the human factor that did not affect the workers, but could have been.

Therefore, if the event does not involve work equipment or the malfunction of an activity, is this event no longer dangerous for workers? Also, the legislator does not clearly state whether the human factor belongs to the internal or external environment, leaving it to the discretion of practitioners, on a case-by-case basis.

In practice, the legal provisions are not applied uniformly, in the sense that either the event is investigated by the labor inspectors of the Control Body, even if work equipment as defined by law was not involved, namely any machine, apparatus, tool or installation used in work, or it is not investigated even if the inappropriate behavior of the human factor is of external origin, although the event itself put the workers at risk.

This question raises a real and frequently encountered problem in practice: the non-uniform application of the legal provisions regarding the investigation of work events. This lack of coherence can be explained by several factors, such as:

1. Different interpretations of the legislation in the field, that is, even if Law no. 319/2006 on occupational safety and health clearly defines notions such as "work equipment" or "occupational accident", the interpretation of these concepts differs from one labor inspector to another or from one institution to another.

For example, some inspectors consider that only incidents involving work equipment fall under the scope of investigation by territorial labor inspectorates, while others may extend the scope of application, also analyzing events generated by human factors or external behaviors, if these were likely to endanger employees. Similarly, in some territorial labor inspectorates, the event is investigated only if the danger was caused by an

employee, while in other inspectorates, those caused by third parties who are not related to the work process, but the incident endangered employees, are also taken into account.

2. Lack of clear and uniform application procedures, in the sense that, although the legislation provides for the obligation to investigate certain types of events, not all atypical situations are procedurally regulated. For example, as mentioned, there is not always a clear procedure for events caused by external persons (visitors, customers, etc.), and this impediment allows territorial labor inspectorates to interpret differently whether an incident "seriously endangers workers" or not, which influences the decision to investigate the event or not.

3. Variable subjective and organizational factors, in the sense that the workload in the inspectorates and the lack of staff can influence the inspectors' decision to start an investigation or not, especially in "borderline" cases, i.e. those that can be interpreted.

Differences in the experience or professional training of labor inspectors can lead to non-unitary and even strongly differentiated applications of the same legal norms.

Also, institutional pressures or the prioritization of areas considered to have a higher risk of injury and illness than others, are elements that can influence the way in which the law is applied in practice.

4. In the absence of an efficient mechanism for centralizing data on investigated/uninvestigated events, of a comparative analysis at national level, and of continuous training of labor inspectors based on concrete case studies, it is difficult to ensure a unitary application of legal provisions at national level.

In conclusion: it is necessary to clarify secondary legislation through explicit methodological norms and practical guides applicable throughout the country, unitary and periodic training of labor inspectors, based on real cases, digitalization and transparency of investigated case studies, to allow comparative analysis and correction of discrepancies, where appropriate, and better inter-institutional cooperation in all cases.

And in the case of event research, another legislative contradiction arises.

Thus, if in a situation where the victim of an event has only 1-2 days of sick leave, that event is qualified as light, while if he has more than three days of sick leave, it is classified as a work accident that caused temporary incapacity for work. In practice, paradoxical situations have also been encountered in which, although the victim fell from the floor and suffered injuries, he did not go to the doctor and, therefore, did not receive sick leave, the event cannot be classified as a work accident, despite the obvious seriousness of the situation.

Although this approach to the subject provides an objective, clear and easy-to-apply criterion, it nevertheless raises important problems in practical application.

The length of sick leave does not always truly reflect the seriousness of an event or the risks to which the worker was subjected. There are situations in which the victim may choose not to see a doctor, either out of distrust or as a result of social pressure or fears of losing their job. In these cases, the doctor does not issue a sick leave certificate, assessing that the victim can continue their professional activity.

Other times, a reduced leave of one or two days is granted, although the physical condition of the worker would justify a longer recovery period.

In such cases, potentially serious events remain unregistered as work accidents, which affects both official statistics and preventive measures that could be implemented later.

Exclusive reliance on the sick leave certificate as the sole criterion for classifying an event as an occupational accident is insufficient and may lead to distortion of the reality on the ground. A review of the relevant legislative framework, allowing for a more comprehensive assessment of risks and events, would bring significant benefits for workers' safety and for employers' prevention policies.

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CRIMINAL PECULIARITIES IN PREVENTING MONEY LAUNDERING IN THE REPUBLIC OF MOLDOVA: PROBLEMS AND FUTURE SOLUTIONS

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Abstract

Preventing money laundering in the Republic of Moldova is essential to national criminal policy and international commitments to fighting economic and financial crime. Some of the current problems that hinder the process of preventing and combating money laundering include restrictive interpretation of the crime; lack of clear provisions on the criminal liability of legal persons, despite it being regulated; treatment of money laundering as an underlying offense, rather than investigating it separately (difficulties in applying the principle of autonomy of the offense); and low judicial efficiency, with few final criminal sentences. Due to these deficiencies, hypotheses have been formulated regarding the revision of the regulatory framework in line with international and European standards, as well as guidelines on institutional strengthening, raising awareness, and education in this area. A multidimensional approach could constitute an effective system for preventing and combating this crime.

Key-words: *autonomous money laundering, restrictive interpretation of the crime, low judicial efficiency, perspectives and solutions etc.*

Introduction.

Currently, money laundering is one of the most sophisticated forms of financial crime. It has significant implications for the integrity of national economies and international financial security. Technological advancements, globalization, and the growing interconnectedness of financial markets have made it easier to hide the illegal source of funds, turning money laundering into a complex transnational crime.

Most jurisdictions have adopted a legal framework that recognizes the autonomy of the crime of money laundering from the predicate offense, in accordance with international (FATF, UN) and European standards. However, in practice, this autonomy is often undermined by the difficulty of proving the illicit origin of assets, a lack of judicial specialization, and the inconsistent application of rules.

Although criminal law recognizes money laundering as an offense that can be prosecuted and punished independently of a conviction for the underlying offense, this autonomy is rarely exploited in practice. Prosecutors and courts are reluctant to initiate and pursue money laundering cases without a prior conviction for the offense that generated the illicit proceeds.

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Despite legislative progress and harmonization of the regulatory framework with international standards, the crime of money laundering is often interpreted restrictively at the national level. This interpretation affects the effectiveness of criminal prosecutions and diminishes the state's ability to recover assets derived from crime.

Often, judicial authorities impose a standard of proof that is disproportionate to the nature of the crime by requiring direct, accurate, and complete proof of the assets' source. This approach disregards international practices and case law from the European Court of Human Rights, which allow for circumstantial evidence, clues, and contextual financial analysis to support money laundering charges.

Judicial statistics reveal a low number of cases resulting in final convictions, reflecting low judicial efficiency in combating this phenomenon. In this context, it is essential to strengthen institutional capacities, improve international cooperation mechanisms, and align case law with the principles of effective and fair criminal policy.

On another note, we cannot ignore the significant changes in the global financial environment in which the Republic of Moldova's financial system is integrated. The increasing use of digital currencies has impacted the financial market and generated new risks, particularly those related to money laundering. These digital representations of value use decentralized ledger technologies and have sparked significant interest due to their ability to enable fast transactions without the involvement of traditional financial intermediaries. This creates an environment that is conducive to criminals concealing their assets.

The lack of a supervisory framework and the pseudo- or anonymity of virtual asset transactions pose significant challenges to authorities in managing money laundering risks. International bodies have adopted recommendations for vulnerabilities associated with virtual assets. These recommendations require the regulation of virtual asset providers to prevent money laundering and terrorist financing (*FATF Recommendations, 2018, R.15*).

Like many other countries, the Republic of Moldova is embroiled in a dispute over the regulation of this new sector. In the context of EU accession negotiations, the state plans to implement the EU regulatory framework for crypto assets by adopting the Markets in Crypto Assets Regulation (MiCAR). This will require current anti-money laundering/counter-terrorist financing (AML/CFT) legislation to align with the new regulations, including amendments to Law No. 308/2017 on the prevention and combating of money laundering and terrorist financing, as well as the Criminal Code of the Republic of Moldova.

The difficulty of proving the crime of money laundering, its restrictive interpretation, and the ineffectiveness of the regulatory framework in addressing the challenges of the financial sector limit the applicability of criminal law to some extent, as will be detailed below.

Results.

One of the most common forms of restrictive interpretation is to make criminal prosecution for money laundering conditional upon a previous conviction for the underlying offense. Although criminal law—at both the national and European levels—enshrines the autonomy of this offense, criminal prosecution authorities are conservative about building cases based on evidence of the illicit nature of the assets in the absence of a final judgment for the offense that generated these illicit profits.

Another form of restrictive interpretation involves artificially limiting the categories of offenses that can constitute predicate offenses. For instance, some courts do not accept administrative, tax, or minor corruption offenses as grounds for money laundering charges, despite these offenses being expressly included in modern legislation and Financial Action Task Force (FATF) recommendations. This fact is also characteristic of the relevant national criminal legislation, which expressly states in the criminalization provision, Article 243, Paragraph 1, Letter a), that the illicit property must originate from the commission of a crime. This provision reads, "The conversion or transfer of property by a person who knows or should have known that it constitutes illicit income, in order to conceal or disguise the illicit origin of the property or to assist any person involved in the commission of the principal offense [...]". Conversely, Moldovan law does not categorize the list of predicate offenses from which criminal assets originate.

In this context, Romanian legal scholars emphasize that "money laundering's autonomy does not mean a complete break from the predicate offense, but rather functional independence that allows for criminal liability even in the absence of precise identification of the source offense if the illicit nature of the property is proven" (*A. Boroi, Criminal Law: Special Part, Bucharest, 2021a, p. 420*).

Similarly, according to A. Boroi, "interpreting the autonomy of the crime of money laundering in a formal sense, conditioned by a previous conviction, nullifies the real purpose of criminalization—that of combating the concealment of the origin of illicit funds and discouraging the circulation of dirty money" (*Boroi, 2021b, p. 422*).

V. Podgrușa agrees that "money laundering can be a crime even without a conviction for the underlying offense, as long as there is sufficient

evidence proving the illicit origin of the assets" (*V. Podgruša, Economic and Financial Crimes, Chişinău, 2022, p. 175*).

Neither Article 243 of the Criminal Code nor Law No. 308/2017 on the Prevention and Combating of Money Laundering and Terrorist Financing expressly states that a money laundering conviction depends on a predicate offense conviction that generated illicit proceeds. However, these regulations do not exclude the possibility of considering a criminal sentence for the predicate offense in the context of a money laundering conviction.

For a systematic analysis, we will highlight the European and international interpretations of the autonomy of the crime of money laundering according to the FATF guidelines. These guidelines state that "states should ensure that money laundering is treated as a stand-alone offense and that conviction for the predicate offense is not a prerequisite for conviction for money laundering" (*FATF Recommendations, 2023, R.3*).

The relevant provisions of the Council of Europe's 2005 Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism are set out in Article 9. This article provides that "each party shall ensure that a prior or concurrent conviction for a predicate offense is not a prerequisite for a conviction for money laundering." The Republic of Moldova ratified the convention through Law No. 165 of July 13, 2007.

The important provisions of the United Nations Convention Against Transnational Organized Crime, adopted in New York on November 15, 2000, and ratified by Law No. 15 on February 17, 2005, are set forth in Article 6(2)(e). Where the fundamental principles of a State Party's domestic law so require, it may be provided that the offenses set forth in paragraph 1 of this Article shall not apply to persons who committed the predicate offense.

In general, it is up to states to determine what acts constitute offenses. Thus, while some jurisdictions do not expressly provide for self-laundering as a separate offense, others punish it through broad judicial interpretation. In these cases, self-laundering is treated as equivalent to money laundering without distinguishing between a person laundering money from their own crimes and a person laundering money from the crimes of others.

According to A.M. Coț, although money laundering is recognized as an autonomous crime, this characteristic does not negate its subsequent nature. Thus, the subsequent nature refers to the fact that money laundering necessarily implies the prior existence of a crime generating assets, which are subsequently subject to the laundering process. On the other hand, autonomy means that a prior criminal conviction for the predicate offense is not necessary. However, autonomy does not exclude the court's obligation

to establish that the assets involved originate from a previous criminal act (*A.M. Coț, Money Laundering. Criminally Relevant, No. 1/2018*).

The same approach is also supported in Romanian case law, for example in the Decision of the High Court of Cassation and Justice – Criminal Decision No. 123/RC of 2021, where the defendant was prosecuted for money laundering without a prior conviction for the predicate offense. Thus, the Court held that "The offense of money laundering is autonomous in nature and is not conditional on the existence of a final conviction for the act that generated the assets. It is sufficient for the court to be able to establish, on the basis of the evidence presented, that the assets originate from the commission of an act provided for by criminal law" (*ICCJ, Criminal Decision no. 123/RC/2021*).

British legislation, which includes the Proceeds of Crime Act 2002 (POCA), the basic document regulating the prevention and combating of money laundering, last amended by the Economic Crime and Corporate Transparency Act 2023 (effective April 26, 2024) with new provisions in the field of cryptoassets, establishes two distinct methods of proving criminal property (illicit assets) in the case of an autonomous (independent) money laundering procedure:

- by proving the type of offending that gave rise to the criminal property, or

- by relying on evidence that the circumstances in which the property was handled were such as to give rise to an '...irresistible inference that it could only have been derived from crime' (*R v Anwoir EWCA Crim 1354, 2008*).

Essentially the British framework states that prosecutors are not required to prove that the property in question is the benefit of a particular or a specific act of criminal conduct because such an interpretation would restrict the operation of the legislation. The prosecution need, as a minimum, to produce sufficient circumstantial evidence or other evidence from which an "irresistible inference" can be drawn, to the required criminal standard, that the property in question has a criminal origin. In other words, there could be no reason for the circumstances other than a criminal one.

We deem it pertinent to present international case law that addresses, either directly or indirectly, the autonomy of the crime of money laundering. In Case C-601/20 Lietuvos Respublikos generalinė prokuratūra, the Court of Justice of the European Union (CJEU) reiterated that: "National authorities are not required to prove the unlawful origin of the property by final judgment in order to initiate criminal proceedings for money laundering as long as the facts and circumstances sufficiently prove its unlawful nature." Therefore, a prior conviction for the underlying offense is not necessary to initiate or continue criminal proceedings for money laundering as long as

the authorities have sufficient evidence to justify reasonable suspicion regarding the illegal origin of the assets (*CJEU, Judgment of March 24, 2022, C-601/20, §§ 46–49*).

In *Silickienė v. Lithuania* (2012), the applicant was convicted of money laundering without a final judgment for the predicate offense of embezzlement. Regarding this case, the Court stated, "It is not necessary for a conviction for the underlying offense to exist in order for a person to be held liable for money laundering. However, there must be sufficient evidence to support the conclusion that the property is derived from illegal activity" (*ECHR, July 10, 2012, Silickienė v. Lithuania, §§ 88–91*).

In its decision *BVerfG, 2 BvR 2559/08* (2010), the German Constitutional Court examined the constitutionality of a money laundering conviction without the court establishing the exact predicate offense. The court recognized the validity of circumstantial evidence and acknowledged the presumed unlawful nature of the offense. The court reiterated that "it is compatible with fundamental rights for money laundering to be punished on the basis of convincing evidence of the funds' unlawful origin, even in the absence of a judgment for the predicate offense" (*BVerfG, 2 BvR 2559/08, Decision of November 30, 2010*).

International and constitutional courts consistently uphold the following principles: the autonomy of the offense of money laundering from the predicate offense, the possibility of conviction without a final judgment for the predicate offense, and the acceptance of circumstantial evidence, presumptions, and financial context to establish the illicit nature of the assets. Additionally, according to international treaties on the prevention and combating of money laundering, to which the Republic of Moldova is a party, a conviction for money laundering permits a simultaneous conviction for the predicate offense. A conviction for the predicate offense is not a prerequisite for a money laundering conviction.

Another issue that requires interpretation is the lack of clear provisions regarding the criminal liability of legal persons. While the Criminal Code states that legal persons can be held criminally responsible for various offenses, including economic and financial crimes, the legislation is general and does not explicitly detail the procedures for money laundering cases.

It is important to note that the legislator has amended the Criminal Code regarding the criminal liability of legal persons for money laundering offenses by increasing the penalty (*LP136 of 06.06.24, MO245-246/07.06.24, art. 353; effective 09.07.24*). However, Art. 243 of the Criminal Code does not contain a distinct formulation for applying criminal liability to legal persons. In practice, the absence of clear formulas for

criminal liability of legal entities in the context of money laundering poses challenges. Specifically, it is unclear how a legal person can act with the form of guilt required by Art. 243 of the Criminal Code, nor is the manner of establishing institutional guilt defined: through representatives, organizational culture, or lack of control.

Unlike other jurisdictions (e.g., France, Italy, and Germany), national legislation does not provide for a consistent approach to attributing the actions of natural persons (e.g., employees and management) to the legal entity itself. In these other jurisdictions, the conditions under which the actions of management body members may engage the entity's criminal liability are clearly defined.

In Moldovan judicial practice, cases in which legal entities have been held criminally liable for money laundering are rare or nonexistent. Most of the time, only natural persons (directors or shareholders) are charged. Legal entities are, at most, targeted as the means by which money laundering operations were carried out (e.g., shell companies), but not as subjects liable to criminal sanctions.

This demonstrates the ineffectiveness of the "follow the money" principle, particularly when companies are established solely to conceal the origin of funds (e.g., offshore schemes, shell companies).

In this regard, developing and publishing guidelines or indicative case law that establish how liability is transferred from individuals to legal entities and define forms of institutional participation would contribute to the uniform application of the rule.

Another issue associated with money laundering risks is the lack of a regulatory framework for virtual assets and virtual asset service providers, given the impact on the financial system and the potential for virtual assets to undermine traditional banking systems due to their pseudo-anonymous and decentralized nature. In this context, with virtual assets becoming an increasingly relevant component of the global economy, but also a vulnerable area for money laundering, terrorist financing, and other related criminal activities, the Republic of Moldova faces a significant legislative vacuum regarding the regulation, supervision, and prevention of abuse of virtual assets.

Under the 2019 MER, the Republic of Moldova was rated LC with R.15. The FATF standards were in the meantime revised, introducing new requirements for virtual assets (VAs) and Virtual assets services providers (VASPs). The application of the new requirements for VASPs in the Republic of Moldova was intended to be re-assessed as part of the first enhanced follow-up. The Republic of Moldova however provided no information to assess its compliance with these new requirements nor on the

materiality of the VASP sector. As a result, the Republic of Moldova was re-rated as non-compliant (NC) for R.15. The Republic of Moldova requested an upgrade for this Recommendation under second follow-up with the actions undertaken and progress made and R.15 was upgraded to PC (*MONEYVAL, FUR 3 Republic of Moldova, 2025*).

The regulatory framework for virtual assets and service providers in the Republic of Moldova is still in the early stages of development. Like many other countries, Moldova has not yet implemented a comprehensive legal framework dedicated to regulating this sector. Currently, the legislative framework mainly consists of general provisions from existing anti-money laundering (AML) and counter-terrorist financing (CFT) regulations (*Law No. 308/2017 on the prevention and combating of money laundering and terrorist financing*), which have been partially adapted to address the increased interest in virtual assets. While the current provisions prohibit providing virtual asset services in the Republic of Moldova, accessing virtual assets through authorized providers in other countries is possible through formal and informal methods. This exposes the financial system to money laundering risks.

Literally, the following money laundering risks associated with virtual assets stand out: exploitation of non-compliant exchange platforms or those in high-risk jurisdictions; intermediary services and wallets (mixers, instant exchanges, other services of both legitimate and illicit nature); the use of P2P services, gambling, and cryptocurrency ATMs by criminals for money laundering; the concealment of illicit income through the use of stablecoins; the conversion of virtual assets obtained into currencies with increased confidentiality (layering stage), etc.

To eliminate this scourge, the Republic of Moldova is to adopt a framework law on the cryptoasset market, which will define the meaning of virtual assets and virtual asset service providers; the criteria for authorizing, registering, and supervising these entities; the supervisory framework and related AML requirements; penalties for non-compliance with legal criteria, etc.

Secondly, to align subordinate legislation, the legislator will amend Art. 243 of the Criminal Code, "Money Laundering," by adding references to money laundering through virtual assets, decentralized ledgers, and unauthorized virtual asset service providers (VASPs). Amendments will also be made to Law No. 308/2017 to expressly include Virtual Asset Service Providers (VASPs) as reporting entities in Article 4. Lastly, adjustments to the payment services and electronic money legislation (Law No. 114/2012) are needed to extend its scope to include virtual assets. These changes are necessary to align the Republic of Moldova with international and European standards in this area and address new trends in currency market manipulation.

Conclusion.

Preventing money laundering is an important pillar of the Republic of Moldova's domestic criminal policy and international commitments to fighting financial crime. However, effective enforcement of the relevant legislation is hindered by several structural and interpretive shortcomings. These include the restrictive application of the concept of "money laundering," the lack of regulation of virtual assets and virtual asset service providers, the absence of clear mechanisms for holding legal entities criminally liable despite legal provisions, the tendency to treat money laundering as a derivative of the main crime rather than a separate crime, and the low level of judicial efficiency reflected by the low number of final judgments.

The restrictive interpretation of money laundering reflects a conceptual shortcoming in understanding the nature of the crime, as well as a problem of law enforcement. Effective enforcement requires moving beyond the classic paradigm of a rigid link between money laundering and the predicate offense. It requires accepting a flexible, functional approach based on the analysis of circumstantial evidence. This approach is in line with international case law and the practice of specialized institutions.

It is essential to harmonize national legislation with European and international standards in order to reduce ambiguities in the application of the offense of money laundering. Strengthening the principle of criminal autonomy, in accordance with the autonomous nature recognized in international doctrine, so that the prosecution of money laundering is based on "objective factual circumstances." Developing and establishing clear procedures for investigating and sanctioning legal entities involved in order to demonstrate increased judicial efficiency.

In the absence of clear regulations, the Republic of Moldova remains exposed to risks related to virtual assets, both domestically and internationally. The adoption of a legal framework compatible with EU and FATF standards is not only a necessary measure to protect the integrity of the financial system, but also an essential step in strengthening Moldova's credibility globally. We consider it essential, following the implementation of the framework law on the crypto-assets market in the Republic of Moldova, to propose a draft law amending Art. 243 of the Criminal Code by including the normative method of committing the crime of money laundering through the use of virtual assets, decentralized registers, or unauthorized channels.

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