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SESIUNE DE COMUNICĂRI ÎN PLEN
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COMPARATIVE STUDY ON ORGANIZING AND CONDUCTING PUBLIC MEETINGS IN ROMANIA AND THE REPUBLIC OF MOLDOVA

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Summary

The freedom of assembly is a fundamental right of any citizen, which is guaranteed by the fundamental laws of the state, by treaties and international conventions to which the two states are signatories, as well as by special laws. Therefore, the participation of any citizen in a public assembly / meeting cannot be restricted, unless there is a legal provision to this effect. However, the gathering of a considerable mass of people can represent a major risk to public order and safety and, implicitly, to observing the rights and freedoms of all citizens, regardless of whether or not they have the capacity to participate in that public gathering or are representatives of the state authorities ensuring the smooth conduct of the public assembly or have nothing to do with the latter. It is up to the state legislative bodies to regulate the aspects related to the organization and conduct of a public meeting, in order to limit such risks and threats. A flexible and coherent legislation is an effective tool for the authorities empowered to ensure public order and peace during such demonstrations. In both states there are legal regulations in this regard, generally in accordance with specific social realities and relations.

Keywords: ***freedom of assembly, fundamental rights, public meeting, notification, organizers, participants, local public administration authorities, fundamental duties, ensuring of the public order, restoring of the public order.***

Introduction. Each citizen has the fundamental right to organize and participate in a public meeting, guaranteed by the Constitution [1, Art. 39; 2, Art. 40], treaties and international conventions [3, Art. 20; 4, Art. 11], as well as the special laws regulating the exercise of this right [5, Art. 2; 6, Art. 1 and 7]. However, just like any other right, this one is not absolute, as the fundamental laws specify restrictions in this sense [1, Art. 15, 16, 53 and 57; 2, Art. 15, 16, 23, 54 and 55].

The parameters to exercise the right to freedom of assembly, as well as the actions and responsibilities of state institutions to protect the rights and freedoms of others, are established by laws that regulate the organization and conduct of public assemblies.

But the gathering of a large group can present a number of threats and risks to public safety. In a crowd, individuals who are often honest, positive or socially proactive, can change their behavior, reacting against their own beliefs and feelings. Simply belonging to a crowd gives the feeling of a superior force, which allows individuals to give free rein to reactions and instincts that they would normally censor and repress. The phenomenon of mental contagion is manifested, individuals identifying with the crowd in which they have integrated and reacting according to the mental unity of this mass [9, pp. 9 - 15].

In order to protect public security, fundamental human rights and freedoms, as well as the other fundamental values of the state, as defined in the fundamental laws, it was imperative to adopt legislative provisions, which would regulate the boundaries of the organization and conduct of a public assembly, so as to reduce vulnerabilities, risks and threats to these values.

Methods and materials applied. In carrying out the study, we used the comparative analysis of the special legislative provisions incidental to this field, presenting and highlighting similarities and differences, as the case may be. In the conclusions, we opined on several strong points and also less effective aspects of the provisions of the legislation. The compared materials were extracted from the special regulatory laws in the field: The Act on the organization and conduct of public meetings, respectively the Law of Meetings. The study only aims to compare the constitutional and general legislative provisions, identifying the common, similar aspects, but also the aspects under different regulations.

Content. When launching this initiative, one must start from the constitutional provisions. In the case of both states, the constitutional text is almost identical, guaranteeing freedom of assembly, provided that they are organized and carried out "*only peacefully, without any kind of weapons*" [1, art. 39; 2, art. 40].

Based on and in compliance with the constitutional provision, parliaments have adopted special laws that regulate limitations in exercising this right. The current Romanian legislative provision (Act No. 60/1991) was adopted on September 26, 1991, with subsequent amendments and supplements. The current Act on Assemblies of the Republic of Moldova (Act No. 26/2008) was adopted on February 22, 2008, and was also amended during 2018.

The two normative acts contain similar values and regulations, also found in the legislation of other European countries. However, a number of aspects have a different regulation.

Romanian legislation enshrines the concept of a public assembly, unlike the Moldovan provisions which preserve the constitutional term "meetings". In essence, both names have a similar meaning: a crowd of people who voluntarily gather in certain spatial-temporal conditions, with certain undertaken or acknowledged goals.

Whereas Act No. 26/2008 defines the terms *meeting, meeting with a small number of participants, spontaneous meeting, simultaneous meetings* as important for establishing quantitative and qualitative coordinates of the existence of such a manifestation, Act 60/1991 does not define this concept; it only states in its content a series of different types of public gatherings: "rallies, demonstrations, manifestations, processions and any other gatherings". The Romanian regulation does not provide for a minimum number of participants necessary to be able to organize a public meeting (unlike Spain, where a minimum number of participants is provided for). Practically, a public gathering can also be considered the presence together of a small number of people who have a common, acknowledged goal. From the analysis of art. 3 of Act No. 26/2008, two types of public gatherings can be identified, by reference to the number of participants: with less than 50 participants and above this value.

Another difference consists of the types of public gatherings to which the provisions of the two normative acts apply. The provisions of Act No. 26/2008 do not apply to cultural, artistic, sports and religious events. Even if the Romanian law also applies to the manifestations caused by sports events and competitions, a special normative act was later adopted, which regulates these special types of public gatherings, defines the terms of interest, establishing additional obligations and responsibilities for organizers, participants and law enforcement [7].

Act 26/2008 contains the relevant principles; conversely, in Act 61/1991 these are not specified because they are constitutional principles or stemming from other organic or special laws, also applicable to the field of public assemblies.

In Act 61/1991, the legal limits of a public meeting are established, in order to respect the normative provisions, as well as the rights and freedoms of other third parties. Thus, any public

meeting must:

– take place in a peaceful and civilized manner;

– ensure the security of the participants and the protection of the environment;

– not affect the normal use of communication routes or public transport;

– not disrupt the operation of public or private institutions in the field of education, health, culture or economy;

– not cause disturbances of public order, which present a danger to the life or integrity of people, to their goods or to the public domain;

– discontinue after 23:00 [5, Art. 2].

The limits of this right are supplemented by the prohibition of participants who have consumed alcoholic or narcotic beverages or have such substances in their possession [5, Art. 12 para. (1) letter g)], as well as, those who possess weapons, explosives or other dangerous substances or materials [5, Art. 12 para. (1) letter j)]. The obligation to check these aspects falls on the organizer.

Act No. 60/1991 prohibits the organization and holding of public gatherings that endanger the fundamental values of the Romanian state, fundamental human rights and freedoms, public order and safety, public morals or the organization of a coup [5, Art. 9]. The normative act prohibits the organization and holding of public gatherings near important institutions, near stations, railway stations, ports and airports that ensure the flow of a large number of people, as well as the simultaneous organization and holding of two or more demonstrations with opposing objectives [5, Art. 5].

Act No. 26/2008 prohibits in principle the same types of public gatherings that endanger the fundamental values of the state, as stated in the Constitution, the exercise of the rights and freedoms of individuals, public order and morality [6, Art. 8]. In the legal regulations there are provisions similar to the Romanian legislation regarding the prohibition of participants possessing weapons or dangerous substances that may endanger life or bodily integrity [6, Art. 16]. Unlike Act 60/1991, in Act 26/2008 it is allowed to hold a public meeting even after 11:00 p.m., with the obligation that no means of sound amplification be used between 11:00 p.m. and 07:00 a.m. [6, Art. 16 paragraph (4)].

Both normative acts provide for the procedure of prior announcement of public meetings. Whereas in Act 60/1991 the procedure is called *prior declaration*, in Act 26/2008 the term *notification* is used [5, Art. 6, 7, 8, 9, 10, 11; 6, Art. 10, 11, 12, 13]. In essence, the procedure consists of a way of announcing/informing the local public administration authorities about the intention to organize a public meeting from among those for which the normative provision stipulates this obligation for the organizer. Therefore, the prior declaration/ notification does not represent the request for an agreement to organize a public meeting, because this represents a fundamental right, enshrined by the Constitution, in both cases. "Informing the authorities must be seen from the perspective of mutual advantage: the authorities are informed about the holding of public gatherings and can design the actions to ensure public order, the organizers obtain the necessary protection in the event of acts of disturbance and aggression of the participants" [10, p. 116].

The notification submitted to the local authorities includes basically the same aspects:

– the name of the organizer, with the indication of contact details (the organizer can also be a natural person, even if this is not stated per se, or provided for in the Romanian legislation);

– the purpose, place, date, start time and duration of the public meeting. If the public meeting is dynamic and follows certain routes, these can be indicated;

– inflow and outflow routes to and from the venue;

– the approximate number of participants (which is indicated to be as close as possible to reality);

– the services requested by the organizer from local public administration or police structures.

In the Romanian legislation, the organizer must also specify in this notification the persons he/she designates to be responsible for the organizational and order measures. Another difference appears in the case of the deadline imposed by the legislation to declare a public meeting: at least 3 days in Romania [5, Art. 7] and at least 5 days in the Republic of Moldova [6, Art. 10, par. (1)].

In Romania, the request is analyzed by a Commission made up of the local mayor, the mayor's secretary and, as the case may be, representatives of the territorial police and gendarmerie.

In both legislative provisions, the bodies empowered to analyze the organizer's request, with his/her consent, can propose the modification of some aspects of the prior declaration [5, Art. 8 par. (2); 6, Art. 11]. If there are indications that lead to the prohibition of that public assembly, the mayor can decide this in writing, which he communicates to the organizer within 48 hours of the registration of the request for prior declaration. This decision can be contested in administrative litigation [5, Art. 10 and 11]. In the legislation of the Republic of Moldova, the public administration authorities can start a judicial procedure through which a court of law prohibits the said public assembly, through a decision that must be adopted within a maximum of 3 days from the submission of the procedure, which in turn can be contested in 3 days [6, Art. 14]. Therefore, the competence to prohibit a public assembly rests with the administrative authorities in Romania, unlike in the Republic of Moldova, where it rests with the judicial authorities.

Regarding the obligations of the organizers, participants and administrative authorities, these are much more numerous and more comprehensive in Romania compared to those provided for in the legislation of the Republic of Moldova:

– 10 in Act 61/1991, against 2 in Act 26/2008, in the case of the organizer's obligations;

– 5 in Act 61/1991, against 2 in Act 26/2008, in the case of participant obligations;

– 5 in Act 61/1991, against 2 in Act 26/2008, in the case of the obligations of administrative authorities.

The more numerous obligations in the Romanian legislation lead to a higher responsibility of the organizers, participants, but also of the local public administration authorities. The municipalities can prohibit the sale of alcoholic beverages in the places where public gatherings are held, in their immediate vicinity or even in the entire locality, for their entire duration, with certain exceptions [5, Art. 15 letter a)].

The procedure for ensuring and restoring public order, as the case may be, is much clearer and more detailed in Act No. 61/1991, compared to Act No. 26/2008. Whereas in the Republic of Moldova the competence of ensuring public order rests with the Police and the Carabinieri, in Romania the competence mainly belongs to the Gendarmerie. In the case of restoring public order, Act No. 61/1991 expressly states that the rule is that the intervention by force must be carried out after the written approval of the prefect or his substitute, except in cases where the violence of the participants would immediately endanger the life, bodily integrity or health of law enforcement personnel or other persons have either committed or are about to commit illegal actions [5, Art. 19].

Also, Act No. 61/1991 details the procedure for restoring public order and specifies exactly the summons that must be issued by law enforcement [5, Art. 22 and 23]. Aspects related to the procedure for ensuring and restoring public order can also be found in Act No. 550 of November 29, 2004 regarding the organization and operation of the Romanian Gendarmerie.

In both normative acts it is stipulated that the violation of the legal provisions attracts civil, administrative/ contraventional or criminal liability. Act No. 61/1991 identifies a number of 9 facts that constitute offences, if they do not meet the constitutive elements of crimes [5, Art. 26]. Also, in the content of the normative act, an act that constitutes a crime is criminalized as: "*violent opposition to the organizers, their proxies or to the law enforcement agencies or preventing them from exercising their lawful duties regarding ensuring order in the conduct of public gatherings*" [5, Art. 29]. Of course, all perpetrators are subject to the provisions of any laws that criminalize anti-

social acts, regardless of their nature, criminal or contraventional.

Conclusions. Following the analysis of the two normative acts, it can be concluded that both offer a guarantee of the exercise of the right to "*freedom of assembly*". Also, there is an important series of similarities in the content of the two legislative provisions, in accordance with the constitutional texts, as well as with the treaties and international conventions in the field, to which the two states are signatories.

However, a series of differences are also identified in terms of the regulation of certain procedures (relating to ensuring and restoring public order, for example), certain deadlines (deadlines related to the submission of the prior declaration / notification) or the obligations of the organizers, participants and local authorities.

An obvious difference concerns the very name of the concept: public gatherings in Romania, respectively meetings in the Republic of Moldova. The specific legislation of the Republic of Moldova consistently uses the constitutional term "meetings", while the Romanian legislation uses a more comprehensive term, which includes in the scope of understanding a multitude of types that can fit into the respective concept.

Following the analysis of the two legal texts, a series of proposals can be formulated to calibrate the legislative provisions to social realities.

A first proposal considers the virtualization of the procedure of prior declaration / notification of public assemblies/ meetings, which can be done in two ways:

using an interactive interface by filling in an online form and sending it to the competent public administration authority, the correspondence can only be done virtually, the presence of the organizer at the administrative authority being necessary only for certain additional details;

the use of websites or pages on official social networks/ assumed by an identifiable person.

In both situations, by connecting the databases of the administrative authorities or by checking/ consulting certain internet pages/ social networks, the competent public order structures can obtain in real time the information necessary for the design and execution of public order assurance missions, with the purpose of protecting participants or third parties [11, pp. 342 - 343].

A second proposal concerns the obligation to declare / notify all public gatherings with a certain number of participants, regardless of their type or nature, which are held in public places or open to public access. The declaration of a public assembly does not restrict the exercise of freedom of assembly, this having the role of information, which does not require obtaining an approval. This information must be viewed from the perspective of mutual advantage: the authorities obtain details regarding the conduct of public gatherings and can design the actions to ensure public order; the organizers ensure the necessary protection in the event of acts of disturbance and aggression of the participants [10, p. 116].

In essence, the two normative acts regulate the field of exercising a fundamental right. Following the evolutionary dynamics of society, determined by the unprecedented progress of technologies, the continuous compatibility and adaptation of legal regulations must be taken into account, in order to be able to offer an effective tool to public order structures, but also to all citizens, whose rights must be guaranteed and protected, regardless of their quality in relation to the organization and conduct of a public meeting.

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DISPOSING OF THE PERSON'S HOSPITALIZATION IN THE MEDICAL INSTITUTION FOR THE PERFORMANCE OF JUDICIAL EXPERTISE IN THE CRIMINAL PROCESS

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Summary

The article focuses on the procedures and powers of the criminal investigation body and the prosecutor in situations where hospitalization in a medical institution is necessary, as well as on the procedure for examining forced hospitalization in these institutions.

Internment of a person to a medical institution is a form of deprivation of liberty and must therefore take place only with judicial authorization. This measure can also affect the right to privacy; therefore, it is essential that the entire procedure is followed strictly and without deviation.

The disposition of forced hospitalization in a medical institution for the performance of judicial expertise in the criminal process is the competence of the investigating judge. He must decide based on clear grounds and reasons and strictly follow the legal procedure in such situations. Regrettably, the domestic criminal procedural legislation does not regulate all the necessary aspects regarding internment, its extension and other desired ones that we will explain in the respective publication.

Keywords: prosecutor, criminal prosecution body, request, examination, investigating judge, hospitalization, medical institution, expertise, criminal trial.

Introduction. Hospitalization of the person in the medial institution is a sensitive subject of procedure, which may affect the right to private life and freedom by virtue of Art. 5 and 8 of the ECHR.

A regrettable cause in this segment for the Republic of Moldova is the case *David v. Moldovei* of 27.11.2007 [4], in which the Court reiterates the fact that if a person initially agreed to his hospitalization in a psychiatric institution for the performance of expertise, nothing prevents him later to refuse and leave that institution, so that the continued detention of the applicant from the moment he expressed his intention to leave the hospital constitutes a "deprivation of liberty", therefore interference with the right to freedom. The person expressing the consent from the start is released from a forced hospitalization, having the right to leave the medical institution at any time and no one has the right to prevent this will, as long as a conclusion regarding the forced hospitalization has not been issued in respect of him.

According to Art. 11 paragraph (3) of the Criminal Procedure Code, "*Deprivation of liberty, arrest, forced internment of the person in a medical institution or sending him to a special educational institution, as well as the extension of these measures, are allowed only on the basis of an arrest warrant or a reasoned court decision*". Therefore, when there are legal grounds and reasons for the forced admission of the person in a medical institution, a court order is required.

During the criminal investigation, the investigating judge, who is authorized by law to order forced internment, issues the court decision. This desideratum is regulated in Art. 41 para. (4) of the Criminal Procedure Code – "*The investigating judge ensures judicial control during the criminal investigation by ordering the person's hospitalization in the medical institution*".

At the same time, in accordance with the provisions of Art. 301 paragraph (3) of the Criminal Procedure Code, "*(...), hospitalization of the person in a medical institution for the performance of the judicial expertise, (...) it is done with the authorization of the investigating judge*".

Analyzing the stated provisions, we find that when during the criminal investigation there is the need to carry out a judicial expertise, and the suspect (accused) refuses to be hospitalized for his evaluation and examination, the investigating judge issues a reasoned decision for forced hospitalization for the stated purpose.

Methods and materials applied. Theoretical, normative and empirical material was used in the development of this publication. In addition, the research of the respective subject was possible by applying several scientific investigation methods specific to the criminal procedural theory and doctrine: logical method, comparative analysis method, systemic analysis, etc.

The purpose of the research consists in research and analysis of the internal normative framework, the doctrine and the jurisprudence regarding the disposition of the person's hospitalization in the medical institution for the performance of judicial expertise in the criminal process.

Discussions and results obtained. According to the provisions of Art. 152 paragraph (1) of the Criminal Procedure Code, "*If for the performance of the medico-legal or psychiatric expertise there is a need for long-term supervision, the suspect, the accused, the defendant can be hospitalized in a medical institution. This is recorded in the ordinance or conclusion by which the judicial expertise was ordered*". Therefore, at the criminal investigation stage, if for the performance of the judicial expertise (medico-legal or psychiatric) forensic doctors or psychiatrists need more time to supervise the suspect or the accused, in order to finally give objective conclusions on the object of the expertise, the criminal investigation body is obliged to indicate this fact in the ordinance ordering the expertise.

In other words, the law dictates the fact that when the criminal investigation body orders the medico-legal or psychiatric expertise, it will expose, in the same ordinance, the forced hospitalization of the person in the medical institution.

We consider that the stated aspects do not correspond to the principle of the inviolability of the person, because at the stage of issuing the ordinance ordering the expertise, the criminal prosecution body cannot know how much time an expert doctor needs to perform one or another expertise. Respectively, the determination of the time for carrying out the medico-legal or psychiatric expertise is decided by the expert doctor and not by the criminal prosecution body. Thus, the disposition of expertise that does not require hospitalization (outpatient) or that requires this hospitalization (inpatient) is imposed by medical and not legal judgment.

Based on the above, we are of the opinion that, when the criminal investigation body finds the grounds provided in Art. 142 paragraph (1) of the Criminal Procedure Code, it will issue the ordinance for the disposition of the judicial expertise. If long-term surveillance of the suspect or the accused is necessary for the performance of medico-legal or psychiatric expertise, the criminal investigation body will issue another ordinance ordering forced hospitalization in the medical institution.

This ordinance will be issued in accordance with the provisions of Art.255 of the Criminal Procedure Code. In addition to the conditions mentioned in Art.255 of the CPC, the ordinance for the forced internment of the suspect or the accused must mandatorily include, the reasons for internment, the person's behavior during the procedural actions (for example, during the hearing), analysis of the medical documents of the suspect or the accused (for example, the medical card in which the fact of treating a psychiatric illness is mentioned), the mention of the identification of the suspect or the accused in the records of the narcologist or psychiatrist, the analysis of the statements of other participants in the trial (for example, the statements of the victim or the witnesses from which the inappropriate behavior of the perpetrator emerges) and other matters related to the case.

In the same vein, all the mentioned aspects should be analyzed in relation to the circumstances of committing the illegal act. It is very important for the criminal investigation body to request from the expert institution the information regarding the need for long-term surveillance of the suspect or the accused. If the prosecuting body does not ask for that information, at least it will be obliged to hear the expert doctor to determine the appropriateness of hospitalization. On the other hand, in the long run, this decision has a medical tone, and respectively, only doctors can communicate about the duration of medical investigations. This information must be reflected in the internment ordinance and analyzed together with the other evidence. Only in this way, the criminal investigation body can justify its ordinance and order the forced internment of the suspect or the accused.

In the case *Filip v. Romania* of 14.12.2006 [5], it was found that the applicant was admitted to a psychiatric institution for a period of 88 days. In this case, the Court reiterates that "*one of the elements necessary for the "legality" of detention in the sense of Article 5 of the ECHR is the lack of arbitrariness. Deprivation of liberty is such a serious measure that it is only justified when less severe measures have been analyzed and considered insufficient to protect the personal or public interest that requires detention, in our case transposed by internment. The plaintiff being hospitalized for an indefinite period based on the decision of the prosecutor's office taken without the opinion of an expert doctor having been obtained beforehand. The public prosecutor's office only ordered an expert examination one month after his internment, after receiving the complaint of the applicant who criticized the legality of the security measure on the grounds that such an expert opinion had not been ordered either before or after his 80-day internment. The Court estimates that the prior evaluation by a psychiatrist was indispensable, taking into account in particular the fact that the applicant had no history of mental disorders. In any case, it was not an emergency hospitalization, plus the doctor's request regarding the need to extend the hospitalization period was missing, thus limiting the plaintiff's right without a legal basis, his hospitalization being arbitrary and illegal*".

"In order to obtain the expected results, it is necessary to take into account all the circumstances of the case, the reasons and the purpose of the crime, data regarding the illnesses the person suffered, as well as the previous behavior but also the behavior of the person during the trial" [9, p. 1024]; all these, as a whole will elucidate the complete picture of the suspect/accused's personality for making the correct decision regarding the need for internment.

In support of the mentioned idea the analysis of the following phrase comes *"there is a need for supervision"* stipulated in Art. 152 paragraph (1) of the Criminal Procedure Code. Thus, the question arises – when does this need arise and who actually makes the decision in this regard? It is natural, as we mentioned before, that the need for supervision is decided only by doctors and by no means by criminal prosecution bodies. Namely, from the moment when the doctors will inform the criminal investigation body about the need for hospitalization, only then the presence of the factual basis for the forced hospitalization of the person in the medical institution will be established.

To leave no room for ambiguous interpretations, we consider it necessary that Art. 152 paragraph (1) of the Criminal Procedure Code should be amended and completed in such a way as to provide for the issuance of the reasoned order for the forced admission of the person in the medical institution, other than the order for the disposition of judicial expertise.

After the issuance of the ordinance regarding the forced admission to the medical institution of the suspect or the accused, the prosecutor will submit a reasoned motion to the investigating judge, requesting the authorization of the forced admission. This legal imperative results from Art. 52 paragraph (1) point 16) of the Criminal Procedure Code – "*In the framework of the criminal investigation, the prosecutor, within the limits of his material and territorial competence, addresses in the court of law steps to obtain the authorization ... of the admission of the person to a medical institution for the performance of the judicial expertise*".

From the provisions of Art.152 paragraph (2) of the CPC, it follows that the prosecutor's action constitutes the act of notification of the court empowered to order the internment of the suspect, the accused in the medical institution for the performance of judicial expertise.

The prosecutor's request for hospitalization in a medical institution for the performance of the judicial expertise must include, as the case may be, remarks regarding:

– the deed for which the criminal investigation is carried out, the legal classification of the deed;

– the deeds and circumstances that result in doubt about the state of responsibility of the suspect, the accused or the defendant;

– motivation for the need to take the internment measure;

– justification of its proportionality with the intended purpose.

According to Art. 152 paragraph (3/1) of the Criminal Procedure Code, indication of these aspects in the prosecutor's approach is mandatory. Therefore, in accordance with the provisions of Art. 305 of the CPC, the prosecutor's approach regarding the forced hospitalization of the person in the medical institution is examined by the investigating judge in closed session, with the participation of the prosecutor. In the meanwhile, if the state of health of the person already hospitalized in a medical institution allows him to participate in the court session, than this person, for sure, may participate in this session. In the same way, in this meeting, the defender, the legal representatives and the representatives of the mentioned persons will also participate, under the conditions of the Criminal Procedure Code, and the minutes will be drawn up in this sense.

The investigating judge opens the session and informs the participants about the approach submitted by the prosecutor, after which he will check the powers of attorney of the trial participants. Then, the investigating judge will give the opportunity for the parties to present themselves regarding the submitted approach. The prosecutor has the first word, who will argue his approach, and then the other parties will continue. After the explanations of the participants in the meeting, the investigating judge, checking the merits of the submitted approach, will authorize the forced hospitalization of the person in the medical institution, or will reject the approach as unfounded[1].

In the case of the suspect, his internment in order to carry out the judicial expertise will be ordered for a period of up to 10 days (Art. 152 paragraph (4) of the Criminal Procedure Code). When the person is accused, his hospitalization in a medical institution, for the performance of judicial expertise under inpatient conditions, is ordered for a duration of up to 30 days, with the possibility of extending this term up to 6 months. The deadline is extended by the investigating judge, at the motivated request of the prosecutor, based on the reasoned written request of the doctor who faces difficulties in performing the judicial expertise and needs additional time for it (Art. 152 paragraphs (5), (6) of the Criminal Procedure Code).

"In the case of hospitalization in the psychiatric institution of persons who are not in a state of arrest, they will be guaranteed, mandatorily, all the guarantees provided in Art. 501 paragraph (1) of the Criminal Procedure Code (Art. 490 paragraph (2) of the Criminal Procedure Code)" [8, p.355].

The judge's decision regarding the authorization or rejection of the person's forced hospitalization in the medical institution can be challenged within 3 days from the date of adoption with an appeal in the hierarchically higher court – the Court of Appeal[2]. These provisions are directly indicated in Art. 152 paragraph (2) and Art. 305 paragraph (8) of the Criminal Procedure Code.

These provisions give the parties the possibility of an effective appeal, presenting the arguments and evidence in the hierarchically superior court to request the rejection of the prosecutor's action.

It should be noted that Art. 311 paragraph (1) of the CPC does not expressly provide for the

[1] See the provisions of Art. 305 of the Criminal Procedure Code.
[2] See: Art. 152 paragraphs (2), (7); Art. 305 paragraph (8) of the Criminal Procedure Code.

right to challenge with appeal the conclusion of the investigating judge regarding forced hospitalization in the medical institution. Although the suspect can be forcibly hospitalized in the medical institution for a period of no more than 10 days, he is definitely deprived of this right. For these reasons, we support the amendment and completion of Art. 311 paragraph (1) of the Criminal Procedure Code, therefore the respective provisions also indicate the suspect's right to appeal.

How do we proceed in the situation where the accused is remanded in custody? The answer to this question is provided by the provisions of Art. 152 paragraph (8) of the Criminal Procedure Code, which stipulates that "*If the suspect, the accused is under preventive arrest, his transfer for the performance of the forensic medical expertise in inpatient conditions, is ordered at the request of the prosecutor with the authorization of the investigating judge*". Analyzing the given rules, we find that when the accused is arrested and there is a need for a long supervision in order to carry out the judicial expertise, he can be transferred to the medical institution where this expertise is carried out. If it is decided to transfer the accused in respect of whom the preventive measure of arrest (or house arrest) is applied, what happens to the preventive measure?

Art. 152 of the Criminal Procedure Code do not provide an answer, but we find the solution in Art. 490 paragraph (1) of the same Code: "*Upon ascertaining the fact of illness of the person in respect of whom a criminal investigation is being carried out and who is under arrest, the investigating judge orders, on the basis of the prosecutor's approach, his hospitalization in the psychiatric institution, adapted for the detention of arrested persons, ordering, at the same time, the revocation of preventive detention. About the further improvement of the state of health of the person hospitalized in the psychiatric institution, the administration of the institution immediately informs the prosecutor who leads the criminal investigation in the respective case*".

The Court emphasized in the case *H.L. v. Great Britain* [6], the absence of procedural rules regarding the detention of the incapacitated person, in contrast to the multitude of guarantees that apply in ordinary cases. As a result of the lack of procedural rules, medical staff is assuming full control over the liberty and treatment of a vulnerable individual based only on clinical assumptions, and although the Court did not question their good faith or failure to act in favor of the claimant, the purpose of the existence of guarantees is to protect individuals against professional errors and omissions. The absence of these rules of procedure led, in the opinion of the Court, to the arbitrarily taking of the measure, and therefore to the violation of Art. 5.

Furthermore, the disorder must have such a character or extent, which justifies hospitalization, which, however, cannot be prolonged beyond the presence of these disorders [7].

An important aspect is in the case of solving the forced hospitalization in the medical institution of minors suspected or accused of committing a crime. It should be noted that in the given situation the criminal investigation body would also take into account the provisions of Art. 474-481/1 of the Criminal Procedure Code.

In the meanwhile, it should be noted that at the time of the examination of the approach regarding the forced hospitalization of the minor in the medical institution, the lawyer, the legal representatives, the pedagogue, the psychologist would compulsorily participate. To our mind, a doctor must also participate in this court session, depending on the object of the judicial expertise.

If in the cases regarding minors the participation of the defense attorney is mandatory from the moment of ascertaining the age of the person and the first interaction with the criminal prosecution body, in the procedure of application of coercive measures of a medical nature, the participation of the defense attorney is mandatory from the moment of the adoption of the ordinance by which the judicial expertise was ordered in the inpatient of the psychiatric institution regarding the person concerning whom the procedure is being conducted, if the defender was not previously admitted in this process[3]. In accordance with Art. 494 paragraph (2) of the Criminal Procedure

[3] See the provisions of Art. 494 paragraph (1) of the Criminal Procedure Code.

Code, "*From the moment the defense attorney enters the process, he has the right to meetings with the person whose interests he is defending, without limiting their number and duration, if the state of his health does not hinder the meetings. The defender also has the other rights provided for in Art. 68, which is accordingly applied*". Of course, no one has the right to limit the lawyer's meetings with his client, but in those cases, it is natural to take into account the state of health. We believe that when the lawyer needs these meetings, he will consult his client's doctor as a preventive measure, after which he will decide whether or not it is necessary to talk to him, in order not to worsen the person's health.

Conclusions. From the analysis of the existing normative framework in relation to the discussions and arguments brought through the respective research, we come to the conclusion that the rules of criminal procedure do not include and do not clarify all the situations that may arise regarding the forced hospitalization of the person in the medical institution for the performance of judicial expertise. Thus, we consider that the ordinance on internment is a disposition act separate from the ordinance on disposition of expertise, for which reason it is necessary to complete and amend Art. 152 paragraph (1) of the Criminal Procedure Code. It is necessary to complete and amend Art. 311 paragraph (1) of the Criminal Procedure Code, as it grants the suspect the right to an effective appeal. In the event that the accused is arrested, and regarding him forced hospitalization in the medical institution will be authorized, the respective preventive measure is to be revoked.

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ENSURING THE RIGHTS OF INDIVIDUALS IN THE CONTEXT OF SPECIAL PRE-TRIAL INVESTIGATION: AN ANALYSIS AT THE LEVEL OF THE CONSTITUTION OF UKRAINE AND THE CRIMINAL PROCEDURE CODE OF UKRAINE

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Summary

The article analyses the issue of ensuring individual rights in the context of special pre-trial investigation at the level of the Constitution of Ukraine and the Criminal Procedure Code. The author points out that specialised criminal proceedings in Ukraine, which include the stages of special pre-trial investigation and special trial, serve as a means of accelerating the criminal justice process when the accused or suspect is absent. The author analyses Articles 29, 31, 55, 64 together with the provisions of Chapter 24-1 of the CPC of Ukraine (Code of Criminal Procedure of Ukraine) "Peculiarities of Special Pre-trial Investigation of Criminal Offences".

Keywords: enforcement of rights, criminal proceedings, special pre-trial investigation, in absentia.

Introduction. The tradition of conducting court hearings in the absence of the accused has deep historical roots, stretching back over more than two thousand years. Despite this, the modern application of the mechanism of special pre-trial investigations within the legal system of Ukraine has sparked lively debates.

The specialized criminal procedure in Ukraine, which includes stages of special pre-trial investigation and special court hearing, serves as a means to expedite the criminal judiciary process when the accused or the suspect is absent. This approach allows for minimizing the abuse of procedural rights by the aforementioned individuals. The implementation of specialized criminal proceedings becomes a key element in ensuring adequate timelines for conducting criminal investigations, enhancing the efficiency of the criminal justice system, ensuring the inevitability of punishment for crimes, as well as protecting the rights of the victims and the interests of the state, the public, and private individuals. It also indicates the process of integrating Ukraine into European and international norms and standards. Accelerating the court process is aimed at effectively implementing justice, primarily focusing on protecting the interests of society, the state, and individuals who have suffered from criminal offenses, and reducing the opportunities for abuse by suspects and the accused.

The conduct of special pre-trial investigations in accordance with Chapter 24-1 of the Criminal Procedure Code of Ukraine (CPCU), "Special Aspects of the Pre-trial Investigation of Criminal

Offenses," may involve several articles of the Constitution of Ukraine. This is because the Constitution is the fundamental law of the country and establishes the fundamental principles of human and citizen rights and freedoms, as well as the foundations of the judiciary.

Article 29 – Guarantees the right to freedom and personal inviolability. This article is important as the special pre-trial investigation is often carried out in relation to individuals who cannot be held accountable in person due to their absence. Thus, the procedure must be conducted with adherence to the principles of legality and fairness.

Article 31 – In the context of the special pre-trial investigation, emphasizes the necessity of adhering to procedural fairness, ensuring that any restriction on personal secrecy occurs only under the condition of clear legal justification and judicial control. This provides protection against arbitrary interference and highlights the importance of preserving fundamental human rights, even within complex criminal investigations.

Article 55 – Guarantees the right to judicial protection. This article is particularly important since the special pre-trial investigation does not preclude the necessity of ensuring the right to a fair judicial process. An individual has the right to defense, even if they cannot be present personally.

Article 64 – Indicates that constitutional rights and freedoms cannot be restricted, except in cases established by the Constitution. Restrictions on rights during a state of emergency or martial law must be proportional and cannot be used to eliminate or limit rights and fundamental freedoms [1].

The utilization of these constitutional articles as the basis for conducting special pre-trial investigations "in absentia" underscores the importance of the principles of legality, proportionality, and fairness. It is crucial that each step in this process is carefully considered and aligns with the fundamental human rights enshrined in the country's constitution, as well as Ukraine's international human rights obligations. In Ukraine, the special criminal proceedings, which include special pre-trial investigation and special court proceedings, serve as a means to expedite criminal justice in the absence of the suspect or accused, reducing abuses of procedural rights by suspects and accused individuals. Special criminal proceedings are an important tool for ensuring reasonable durations of criminal proceedings, enhancing the effectiveness of criminal justice, implementing the principle of inevitable responsibility and punishment of the offender, effective protection of the rights of the victim, adequate defense of state, public and private interests, and signify further integration of Ukraine into European and international standards. The acceleration of justice ensures effective jurisprudence, primarily protecting the interests of society, the state, and victims of criminal offenses, and reducing the abuse of procedural rights by suspects and accused individuals.

The widespread application of the institution of special pre-trial investigation is dictated by the significant occurrence of cases where suspects and accused individuals, who are located in the temporarily occupied territories or outside Ukraine and have been declared internationally wanted, evade appearing at the calls of the investigator, prosecutor, investigative judge, or court.

Article 6, paragraph (1) of the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) stipulates that everyone has the right to a fair and public hearing within a reasonable time by an independent and impartial tribunal. This highlights the significant importance of the personal presence of the suspect or accused during investigative actions (receiving notification of suspicion, interrogation, conducting an investigative experiment, presenting the individual for identification, obtaining samples for examination), where deprivation or restriction of this right is only possible in exceptional cases, primarily due to the will of the suspect or accused themselves [2].

The legal regulation of the current "in absentia" institution is provided by Chapter 24-1 of the Criminal Procedure Code of Ukraine (CPCU), titled "Special Aspects of the Pre-trial Investigation of Criminal Offenses". This chapter does not define the concept of special pre-trial investiga-

tion. Part 1 of Article 297-1 of the CPCU states that the special pre-trial investigation "in absentia" is conducted in accordance with the general rules of pre-trial investigation provided by the CPCU, taking into account the provisions of this chapter. Part 2 of the same article indicates that the special pre-trial investigation is conducted in relation to a suspect, excluding a minor, who is hiding from the investigative bodies and the court to evade criminal responsibility and has been declared wanted on an interstate and/or international level.

Participants of the pre-trial investigation include:

– the investigating judge;

– the prosecution side: prosecutor, investigator, detective, head of the pre-trial investigation body, operational employee by assignment;

– the defense side: suspect, accused, acquitted, convicted, legal representative of the suspect or accused, defender;

– the victim.

During the special pre-trial investigation, in the absence of the suspect, a defender is mandatory to protect his rights.

The legislator has defined the following mandatory characteristics of the special pre-trial investigation: 1) the presence of the status of a suspect in committing a crime; 2) the mentioned individual must be hiding from the investigative bodies and the court; 3) aim to evade criminal responsibility for the crime committed; 4) be declared wanted on an interstate and/or international level.

The special pre-trial investigation is conducted based on the decision of the investigating judge in the criminal proceedings, as stated in Part 2 of Article 297-1 of the CPCU.

The special pre-trial investigation is an exceptional order of conducting the investigation, and as a general rule, the suspect (accused) should participate in the criminal proceedings.

After the investigating judge issues a decision to conduct the special pre-trial investigation in the criminal proceedings, the special pre-trial investigation begins.

Initiating a special pre-trial investigation is possible regarding individuals recognized as suspects, i.e., having the procedural status of a suspect (notification of suspicion delivered in the order prescribed by the CPCU), as provided by part 1 of Article 297-1 of the Criminal Procedure Code of Ukraine (CPCU). According to paragraph (8) of part 2 of Article 52 of the CPCU, the participation of a defender for the person undergoing the special pre-trial investigation is mandatory from the moment the decision to conduct the special pre-trial investigation is made. According to Article 297-4 of the CPC of Ukraine, the investigating judge denies the application for conducting a special pre-trial investigation if the prosecutor, investigator does not prove that the suspect is evading the investigative bodies and the court to avoid criminal responsibility and has been declared wanted on an interstate and/or international level. In deciding on conducting the special pre-trial investigation, the investigating judge is required to consider the presence of sufficient evidence to suspect the person for whom the application is submitted of committing a criminal offense.

After evaluating the submitted application, the investigating judge issues a decision in the form of a ruling, which outlines the justification for accepting or rejecting the application to conduct the special pre-trial investigation. Guarantees for ensuring the rights of the person include: 1) the presence of consent from the suspect, accused to apply the trial in absentia, if the sanction of the criminal offense attributed to the suspect, accused does not entail imprisonment; 2) participation of a defender in the process; 3) proper notification of the suspect, accused about the place and time of the procedural action regarding him and his participation by the investigator, prosecutor, court; 4) prohibition of applying the trial in absentia for minors; 5) the right of the convicted person in a trial in absentia to appeal such a verdict and review the proceedings with his participation, etc.

Failure to comply with such guarantees when using special criminal proceedings may lead to illegal deprivation of the accused's property without their knowledge, violation of the right to a fair trial, and other rights [4].

A positive aspect of conducting in absentia criminal investigations is procedural economy, manifested in the simplification and acceleration of procedural judiciary. The implementation of such proceedings, in compliance with the guarantees for the protection of individual rights provided by Article 6 of the European Convention on Human Rights and Fundamental Freedoms, is positively received by the European Court of Human Rights [5]. Therefore, its proponents convincingly argue that in Ukraine, in absentia criminal proceedings should not only exist but also have prospects for development, given the practical necessity of extending them under certain conditions to a larger number of individuals [6] and criminal offenses [7].

In the special pre-trial investigation of criminal offenses, court decisions can be made concerning the proceedings: 1) a guilty verdict, i.e., it is proven that: – a criminal offense, in which the person is accused, was committed; – the criminal offense was committed by the accused; – the act of the accused constitutes a criminal offense; 2) an acquittal, i.e., the aforementioned circumstances are not proven, also when the court establishes grounds for closing the criminal proceedings, namely the absence of the event of a criminal offense (Part 1, Paragraph (1) of Article 284 of the CPC); – the absence of a criminal offense in the act (Part 1, Paragraph 2 of Article 284 of the CPC).

Pre-trial investigation bodies and the court have been given the opportunity to apply in absentia proceedings to: 1) individuals who are hiding from investigative bodies and the court and have been declared wanted on an interstate and/or international level; 2) individuals who have been hiding from investigative bodies and the court for more than six months; 3) individuals regarding whom there are factual data that they are outside Ukraine, in the temporarily occupied territory of Ukraine, or in the area of the anti-terrorist operation.

A procedure for special investigation towards individuals evading investigative bodies and the court to avoid criminal responsibility has been introduced if the individual is outside the borders of Ukraine. Society has repeatedly criticized the use of the term "abroad" due to its relative ambiguity and the absence of clear legal mechanisms for its application. Proving the fact of an individual's stay outside Ukraine often proved impossible. Difficulty also arises in the context of territories under temporary occupation (Autonomous Republic of Crimea, certain areas of Luhansk and Donetsk regions), where people living in these regions are not considered to be "abroad," which excludes the possibility of conducting a special pre-trial investigation regarding them.

However, the provision of judicial control and protection of the rights of individuals to whom special pre-trial investigation may be applied remains unchanged and is mandatory for compliance.

According to the requirements of Article 297-5 of the Criminal Procedure Code of Ukraine, during the special pre-trial investigation, subpoenas for summoning the suspect must be sent to the last known address of their residence or location. Additionally, they should be published in nationwide media and on the official websites of the investigating bodies. However, there are situations when a person may have an accident, sustain serious injuries that prevent them from communicating, and if their family members, cohabitants, housing maintenance organization employees, or workplace are unaware of this, and also in the case of no internet access, then making a decision to conduct a special pre-trial investigation may lead to the violation of the rights of this individual.

Article 29 of the European Convention on Mutual Assistance in Criminal Matters, stipulates: "If a person sentenced by a verdict issued in the absence of the accused, or by a decision in a criminal case, does not lodge an objection, the decision, for the purposes of this Convention, is considered as having been made after the accused had been heard" [8].

Special pre-trial investigation can be described as a distinct part of the pre-trial investiga-

tion process, which includes investigating certain types of criminal offenses in cases where the suspect intentionally evades participation. This process ensures the conduct of the investigation while guaranteeing the observance of the suspect's rights and the requirements set by legislation regarding procedural protections, as well as facilitating the fulfillment of the fundamental tasks of criminal proceedings.

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THE LEGISLATIVE PERSPECTIVE FROM ROMANIA REGARDING THE SCOURGE OF DRUGS

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Summary

Illicit drugs are a complex social and health phenomenon affecting millions of people worldwide, with enormous negative consequences for both users and their families and communities. Drug use generates huge costs and damages to public health and safety, the environment and labor productivity, it brings with it threats to security, related to violence, crime and corruption; the illicit drug market is one of the main sources of income for organized crime groups, and drug trafficking affects stability and governance.

Romanian legislation in the field underwent a significant change with the promulgation of Law No. 58/2024, which supplements Law 43/2000 and amends Law 194/2011, eliminating the possibility of serving the sentence under supervision in the case of cultivation, offering, sale, transport, purchase and possession of drugs of high risk and international high-risk drug trafficking, as well as increasing the amount of punishments, in the sense that carrying out operations with products likely to have psychoactive effects constitutes a crime and is punishable by imprisonment from three to 10 years. In order to combat drug-related crime, Romania seeks to strengthen security means by preventing, deterring and disrupting drug-related criminality, through judicial cooperation and in the field of ensuring compliance with the law, operative data, interdiction, confiscation of assets derived from the commission of crimes, investigations and border management. This punitive strategy is in dissonance with the new policy of the European Union, promoting public health and controlled legalization of drugs, although practice has shown that the strategy based on the fight against drugs has failed, increasing their consumption exponentially.

Keywords*: drug use, drug trafficking, ethnobotany, legislative news, criminality, crime, punishment, prohibition, legalization, decriminalization.*

Introduction. On August 19, 2023, on DN 39, near the town of 2 Mai, a tragic accident took place after Vlad Pascu (19 years old) drove into a group of eight young people who were walking on the side of the road. Two of them died on the spot and three others were injured.

The accident revealed surprising details: the driver had been stopped by the police twice - the day before the tragedy, at a filter, and the same night, but he was allowed to leave the Police headquarters without being tested for drugs use, although drugs were found in his car, and the car did not have valid third-party liability insurance.

Less than an hour after the last control, Vlad Pascu caused the accident, while traveling at 102.86 km/h, doing slalom in traffic!

He stopped the car for just a few seconds about 50 m from the place where he hit the victims, then left the accident site and continued on his way.

Vlad Pascu has been in preventive detention since August 20, 2023, being accused of culpable homicide, culpable bodily harm, driving under the influence of prohibited substances and leaving the scene of the accident without the consent of the police.

Also, the young man is investigated in a case instrumented by DIICOT, together with his parents, for possession of dangerous drugs for personal consumption, high-risk drug trafficking and making the home available for illicit drug use.

Illicit drugs are a complex social and health phenomenon affecting millions of people worldwide, with enormous negative consequences for users, their families and communities. The drug market is one of the main sources of income for organized criminal groups, and drug trafficking affects the stability and governance of countries.

Young people, the category most affected by drug use, institutions facing this scourge. Thus, schools are negatively influenced, generating school absenteeism in most cases. The lowest age of onset declared for the use of psychoactive substances was 12 years.

Methods and materials applied. The qualitative research followed the legislation in Romania, with an emphasis on legislative innovations regarding the drug issue, the review of the literature on this scourge, in contrast to the international context, in which the approach aims to promote public health, controlled legalization and decriminalization of drugs rather than radical coercive measures.

Discussions and results obtained. **The "May 2" Law**. Romanian legislation experienced a significant turn with the signing on March 20, 2024 by the President of Romania of the Decree on the promulgation of Law No. 58 [1]. Known as the "May 2" Law, this legal norm represents the reaction to the increase in the number of criminal cases with crimes related to illicit drug trafficking. Under this law, people found guilty of high-risk drug trafficking can no longer receive suspended prison terms (see Table 1).

THE ACT	**PUNISHMENT**	
	THE OLD LEGISLATION	**THE NEW LEGISLATION**
Cultivating, offering, selling, transporting, buying and possessing for the purpose of trafficking dangerous drugs (ex: cannabis)	2-7 years imprisonment	3-10 years imprisonment
Cultivating, offering, selling, transporting, buying, possessing high-risk drugs (eg: cocaine, heroin, ecstasy) for trafficking. Implications: the high-risk drug dealer will always receive a life sentence, with suspension only possible for a sentence of maximum 3 years in prison.	5-12 years imprisonment	5-15 years imprisonment
INTERNATIONAL DRUG TRAFFICKING		
Import and export of dangerous drugs	3-10 years imprisonment	5-15 years imprisonment
Import and export of high-risk drugs	7-15 years imprisonment	10-20 years imprisonment
Death of the user for the trafficker of any drug, the one who encourages the consumption of high-risk drugs or the doctor who prescribes drugs outside the legal framework	10-20 years imprisonment	15-25 years imprisonment (more serious as a crime of murder)
Cultivation, purchase or possession of dangerous drugs for personal use	3 months - 2 years imprisonment or 1.200-125.000 lei the fine	
Cultivation, purchase or possession of high-risk drugs for personal use	6 months - 3 years imprisonment	

ETHNOBOTANICS		
Any operations (cultivation, mixing, offering, buying, selling, transporting) knowing that it is ethnobotanical	6 months - 3 years imprisonment or the fine	2-7 years imprisonment
Any operations with substances that you should have known to be ethnobotanical	3 months - 2 years imprisonment or the fine	1-5 years imprisonment
Any illegal operations with such substances if you claim that they are permitted by law or authorized	1-5 years imprisonment	2-7 years imprisonment
Advertising for ethnobotanics	1 month - 1 year imprisonment or the fine	1-5 years imprisonment

Table 1. Comparative situation of the penalties provided by the old legislation and the new legislation

Institutionally, prohibitionist efforts are led in Romania by the National Anti-Drug Agency (ANA), which is subordinate to the Ministry of Internal Affairs and is responsible for coordinating, elaborating, developing, promoting, monitoring and studying, among other duties, anti-drug policies.

The comparative national situation from the years 2022 - 2023 of the number of drug-related cases is presented in Table 2 [2, p. 29].

THE NATIONAL SITUATION			
	2022	**2023**	**TREND**
The number of drug-related cases to be resolved	21.167	26.293	Increase with 24,22%
Of which number of new files	11.411	14.931	Increase with 30,85%
Number of cases resolved	8.337	8.843	Increase with 6,07%
Cases resolved by indictment and plea agreements	1.507	1.756	Increase with 16,52%
Defendants arraigned	2.554	2.898	Increase with 13,47%
Of which the defendants are remanded in custody	1.033	1.148	Increase with 11,13%

Table 2. Comparative national situation in the years 2022 – 2023 regarding drug trafficking crimes

New psychoactive substances (NSPs). The Anti-Drug Agency of the European Union monitors 930 NSPs, which are made in clandestine laboratories, have much more serious effects on health than traditional drugs, act directly on the brain producing psychoactive effects, changes in mental and behavioral processes, give physical and mental dependence, the price is more affordable than that of high-risk drugs, which makes them attractive to experience for young people, given their dynamics of appearance and considering the substances in their composition, they are not subject to the law and are not under national control. Among NSPs, "El Padrino", "Spice" or "Euphoria" were consumed by 10.3% of 15-34 year olds at least once in their lifetime and by 3.2% of the school population [3, p. 54].

Regarding cannabis use, 9.5% of young people between 15 and 34 have tried to smoke cannabis in their lifetime, with a proportion of 8.7% of teenagers over 16, 1% of them starting from at the age of 13.

The data are similar to those at the European level: according to the European drug study, cited by ANA, 246 of the 262 drug-using respondents had consumed cannabis, classified as a high-risk drug. The average in the European Union (2023) of young people who tried cannabis in the last year was 8% [4], while in Romania it was 6% [3, p. 23], placing us below the European Union average.

Globally, public drug policies focus on either the criminal justice model, which is punitive, or the public health model, which emphasizes protection and treatment [5, p. 3]. Romania still uses the first model, and given the new legislation, it is increasingly moving away from the public health-centered approach of other European states. Our country began to implement this practice after 1989, taking the example of the United States of America, which was generally based on the prohibition of drug production, trafficking and consumption [5, p. 4]. Currently, the latest legal norm – Law No. 58/2024 – constitutes the main instrument in this "war against drugs" which the Romanian authorities continue to carry out, despite the change of attitude in the other states [5, p. 2-4].

In essence, Romania's main anti-drug approach revolves around reducing the supply of drugs by disrupting trafficking networks and reducing the demand for drugs by preventing/stopping consumption, particularly through the tool of criminal penalties. The annual measurements record numerous records (some absolute) in terms of investigations, prosecutions and convictions, but also increased criminal attention towards users (possessors) of classic drugs, at the expense of traffickers.

Changing the paradigm in the international context. The war on drugs, waged by the authorities according to the classic rules of tougher punishments against users and traffickers, has failed in the West. The paradigm in which consumption is regulated is being imposed in more and more civilized countries.

In the year 2023, United Nations experts requested that states change their offensive strategy to one centered on health and respect for human rights [6].

The European Union, in its drug strategy 2021-2025, calls for an approach that promotes public health [7, p. 2] and the provision of effective alternatives to coercive sanctions [7, p. 20].

But, from a legislative point of view, Romania is corseted in the paradigm of the 80s. While more and more scientific studies show that only a strict legalization could reduce the health risks on the population and more and more countries choose to legalize soft drugs, such as cannabis, Romania stands against the current on this subject, adopting a legislation getting tougher on drugs.

In more and more countries, from the US to Western Europe, the use of cannabis is regulated, more strictly or more lightly, but there are legal distinctions between criminalizing casual users and traffickers, for example. Most of the time, the threshold is given by the quantity. Jail time for a joint is seen by more and more legal systems as not only totally meaningless from a social point of view, but also totally unproductive in the fight against drug trafficking, which remains a huge problem all over the world.

Bottom of Form

Urban myths, according to which cannabis is a transition drug to harder drugs, are debunked by several studies. Marijuana is mostly a terminal drug, and users do not switch to other drugs. People will use drugs even if they are not decriminalized, but studies show that when they are decriminalized, use goes down.

It is believed that the abolition of criminal penalties for simple users would not create a huge wave of users, but would allow better management of those who do have problems with cannabis and who, because of the associated stigma or taboo, do not seek help. It would also decrease the consumption of ethnobotanicals.

From decriminalization to the legalization of a drug, even a recreational one such as cannabis, is a rather big step and one that Romania does not seem ready to take. At the same time, for legalization, a total infrastructure for case management would be needed, starting with an established medical infrastructure.

The largest independent academic study that has ever been done on cannabis use in Romania [8, p. 209] shows that no less than 45% of young people between the ages of 16 and 25 have used this drug at least once, and 51% of them would like to legalize marijuana, much more than the official estimates of the ANA.

The trend towards legalization and decriminalization has also gained momentum in the US, Mexico or Colombia, states that were once on the front lines of the war on drugs. At the same time, the Global Commission on Drugs (GCDP), made up of former heads of state, UN officials and international experts, concluded that, ideally, legal regulation at the global level, for all drugs, would be the most effective method to combat drug trafficking, which in turn finances arms, human trafficking or terrorism.

The countries beyond the Iron Curtain, however, have more restrictive legislation than the rest of Europe. In other countries, there are no proposals for laws to toughen penalties, as in Romania.

Romania's particularly punitive legislation, compared to most European states [9], failed to be an effective tool to combat and prevent consumption and trafficking. Over the past 10 years, despite tens of thousands of people being prosecuted and thousands of convictions for drug trafficking, there has continued to be a high availability of almost all types of drugs [5, p. 7].

Overall, globally and considering all traffic, it is estimated that less than half of all traffic is intercepted [10], while many researchers believe that even current results are actually overestimates. Also, although the state's policy against the user (possessor) is particularly punitive, from 2013 to 2020, the volume of drug trafficking has increased fivefold, and drug consumption has increased by 70%, a doubling in the case of cannabis, quadrupling for cocaine and an eightfold increase in ethnobotanical use [11].

These failures were and are predictable, given the criminological consensus on the ineffectiveness of the prohibitionist approach to drugs: punitive laws are "fundamentally compromised, causing more suffering than they succeed in preventing or alleviating". Thus, it is proven that the punitive approach in the Romanian legislation, "failed to combat the demand and supply and to reduce the negative effects caused by drug consumption" [12, p. 3].

On the one hand, each "impressive catch" represents only a tiny, insignificant amount of the total drug trade, which alters, not stops, the market, and for every arrest/busting there is always someone else to fill the vacant place within the illicit drug market. The consensus is that the supply of drugs cannot be combated by the intervention of law enforcement regardless of the level of funding, especially if they do not focus strictly on trafficking, and that precisely "drug prohibition has strengthened and enriched organized crime" [13, p. 29]. Recent studies tend to find a cultural normalization of small-time drug trafficking/supply among young people [14], in narrow circles.

On the other hand, drug demand is considered to be inelastic, meaning that drugs will be consumed regardless of the level of restrictions, punitive measures, stigma, taboo, fear, or "say NO" type campaigns [15]. Numerous European studies demonstrate the cultural normalization of drug use among young people [16] and show that the demand for drugs cannot be significantly changed by traditional means. The European Monitoring Center on Drugs and Drug Addiction [17] also finds that there is no correlation between increasing penalties and decreasing levels of cannabis use, and United Nations experts, along with the International Drug Policy Consortium (IDPC) and the Commission Global for Public Policies in the Drug Domain (GCDP), demand the immediate abandonment of punitive measures directed against simple users as a minimum act of state responsibility, in other words, demand the decriminalization of possession for personal consumption.

In the context of the tens of thousands of people prosecuted in Romania, a percentage of 80% of DIICOT files with indictments on psychoactive substances are for quantities of less than five grams of substance (ESPAD analysis) [18]. The costs of these approaches not only amount to tens of millions of euros annually, a conservative estimate of 11 million euros considering only prisoners incarcerated for drug offenses [19], but are felt in all areas: social, economic and public health in Romania. Thus, prohibition imposes huge costs and consequences at the level of the entire society, because even the simple foray into the justice system has a significant negative impact on the individual's health and future prospects: reduced chances of employment, social exclusion,

stigma, depression, the development of deviant behavior – aspects that significantly more often cause adverse medical consequences and negatively affect the individual's life prospects.

Any substance with psychoactive potential that can be used as a drug is legally criminalized, the general term being "blanket ban" or total preventive prohibition. Although the legislation previously included criminal penalties for the possession of substances for personal consumption, the High Court of Cassation and Justice ruled that this was not considered a crime, citing problems with the text/form of the law. The lack of criminal sanctions for the possession of these substances is in accordance with the recommendations of international experts in the sense of not punishing simple consumers [20].

The fundamental omission, however, is the non-recognition by the legislators of the fact that the consumption of ethnobotanicals is a direct consequence of the harsh prohibitionist policies and criminal sanctions. Thus, around 2010, especially in states with harsh punitive approaches to drugs, these NSPs appeared. Experts believe that their appearance and proliferation is a direct consequence of the harsh prohibition of classic drugs, especially of natural cannabis, but also of the inaccessibility of heroin for addicted users [21].

In an international context, criminologists consider the recent and immediately following decades as a "global revolution of drug decriminalization and legalization" [22]. So far, more than 50 jurisdictions around the world have decriminalized and/or legalized the most popular classic drugs, abandoned the bankrupt war on drugs, and adopted responsible drug control through legalization. Liberalization (legalization/decriminalization) facilitates access to medical treatment, information and effective management of problematic consumers, by reducing the stigma and canceling the risks of coming under the criminal law [23].

International studies show that there will be a significant increase in the number of people seeking treatment for pre-existing problems – reducing stigma, taboo and criminal risks encourages people with existing or dependent complications to get information and seek medical help.

Conclusions. Drug use generates huge costs and damages to public health and safety, the environment and labor productivity. It brings with it threats to security, violence, crime and corruption.

Our country's security capabilities are strengthened through prevention, deterrence and disruption of drug trafficking and related crimes, judicial and law enforcement cooperation, operational data, interdiction, seizure of criminal assets, investigations and border management.

The exponential growth of drug trafficking in the context of this punitive, offensive strategy against drugs has demonstrated that it has not been successful, which is why internationally, the tendency is to legalize drugs, so that they can be kept under control.

Harsh drug prohibition, through predominantly anti-consumer actions, has failed with devastating consequences for societies and individuals around the world. Abandoning the model centered on criminal justice and replacing it with the philosophy of public health is both an international constant and an urgent necessity for Romania. Failing public drug policies can cause more suffering, marginalization and stigma than even substance use itself. It is time for Romania to act as a responsible state, where the health – and not the punishment – of the consumer comes' first.

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THE NEGATIVE EFFECTS OF ORGANIZED CRIME IN THE CROSS-BORDER CONTEXT

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Summary

This article examines the harmful consequences of organised crime on the sustainable development of contemporary society. Organised crime is the most dangerous form of criminal activity facing mankind. These negative consequences most often consist of disrupting economic activity, causing imminent dangers to public security, also in terms of committing terrorist acts, influencing political decisions by distorting democratic processes, etc. The aim of the authors is to raise awareness among readers and specialists in the field in order to make prevention and counteraction of this social scourge more effective.

Keywords: crime, organised crime, criminal organisations, transnational context, prevention, combating, etc.

Introduction. The multiple political, economic, social and cultural transformations that have accompanied and continue to accompany the beginning of this millennium have radically metamorphosed the phenomenon of crime [1, p. 11]. Organised crime has various definitions. Recently it has been defined as "illegal activities carried out by groups or networks acting together, engaging in violence, corruption or related activities in order to obtain, directly or indirectly, a financial or material benefit" [2].

Transnational organised crime occurs when these activities, or these groups or networks, operate in two or more countries. Transnational organised crime can take many forms and is constantly evolving. The groups and networks involved are fluid and the channels for trafficking one product are often used for others. Some of the typical activities carried out by transnational criminal organisations are trafficking in people, arms, drugs, minerals and wildlife; production and sale of counterfeit goods; fraud and extortion; money laundering and cybercrime.

Globalisation, digitisation and other technological developments are further changing the nature of illicit markets and the modi operandi of transnational organised crime, including recently the emerging use of cryptocurrencies that makes illicit financial flows harder to trace.

Every year, countless lives are lost as a result of organised crime. Drug-related health problems and violence, gun-related deaths, unscrupulous methods and reasons of human traffickers and migrant smugglers are all part of this situation.

Transnational organised crime is not stagnating, but is an ever-changing industry, adapting to international markets and creating new forms of crime. And in short, it is an illicit business that transcends cultural, social, linguistic and geographical boundaries and knows no borders or rules.

Discussions and results obtained. Transnational organised crime covers practically all serious criminal activities of an international nature, motivated by profit, involving more than one country.

It threatens peace and human security, leads to human rights violations and undermines the economic, social, cultural, political and civil development of societies worldwide. The high amounts of money involved can undermine legitimate economies and have a direct impact on governance, such as corruption and 'buying' elections.

While transnational organised crime is a global threat, its effects are felt locally. When organised crime becomes entrenched, it can destabilise entire countries and regions, in effect undermining development assistance in those areas. Organised crime groups can also collaborate with local criminals, thus leading to an increasing incidence of corruption, extortion and violence, as well as a range of other more sophisticated crimes at local level. Violent groups can also turn central cities into dangerous areas and endanger the lives of citizens.

Organised crime affects people in both developing and developed countries. Money is laundered through banking systems. People become victims of identity theft.

In many developed countries, criminal groups traffic women for sexual exploitation and children for forced begging, robbery and pickpocketing. Car theft is also an organised business, as well as vehicles stolen on demand and taken abroad.

Fraudulent drugs and food enter the licit market and not only defraud the public, but can endanger their lives and health. In addition, the trade in counterfeit goods deprives countries of tax revenue. This can also have an impact on legitimate businesses when illegally produced goods replace sales of original products, which in turn affects employers' incomes.

Organised crime contributes to increased public spending on security and police and undermines human rights itself. Profits from most crime are generated in the form of cash, which poses a risk to criminals. Being difficult to hide, cash increases the likelihood of exposure, theft by rival criminals and confiscation by police. When cash enters the legal economy, it is particularly vulnerable to identification and law enforcement intervention. Criminals therefore act to prevent cash from attracting suspicion. For example, they may move it abroad, use it to buy other assets, or try to introduce it into the legal economy through businesses with high cash turnover. As an integral part of transnational organised crime, it is estimated that around 70% of illicit profits are probably laundered through the financial system. However, less than 1% of these laundered profits are intercepted and confiscated.

Combating a global phenomenon such as transnational organised crime requires partnerships at all levels. Governments, businesses, civil society, international organisations and people from all over the world have a role to play.

Transnational organised crime has a significant impact on global public goods. Global public goods are for the benefit of all countries and all citizens of the world; no one can be excluded from their benefit and they cannot be adequately provided by a state acting alone. Clean air, biodiversity and healthy oceans are prime examples of global public goods. Recent years have demonstrated all too clearly how seemingly local environmental problems such as deforestation and plastic pollution can have transboundary or global ramifications, and the same applies in other areas.

The transnational dimension of a large part of organised crime helps it to evade law enforcement, which is mainly set up to operate within national borders. Transnational crime actors systematically exploit jurisdictional gaps and differences in law enforcement approaches and capabilities in different countries. Successfully combating transnational organised crime therefore requires international cooperation.

Transnational organised crime represents a significant barrier for progress on global public goods.

Global public health also suffers from organised crime. Transnational organised crime

can have a negative impact on global public health through the widespread and growing production and trafficking of counterfeit medicines. This problem particularly affects low- and middle-income countries, where, according to the World Health Organization [3], an estimated one in ten medical products is either substandard or counterfeit. In 2015, the prevalence was estimated to be up to 70% in parts of Africa and Asia. The trade in counterfeit medicines often has a transnational element, as medicines are manufactured in one country (China, India and Singapore being the main source countries) and then distributed to many others and introduced into legitimate medicines supply chains worldwide.

Counterfeit medicines can be ineffective in treating the targeted disease and, at worst, can seriously harm or kill those who take them. The WHO estimates that more than 1 million deaths a year worldwide are caused by substandard or falsified medicines, with the highest number of cases (200 000) occurring in Africa [4].

Counterfeit antibiotics are the main type of counterfeit medicines and have been directly linked to the rise in acquired bacterial resistance to antibiotics, including the global increase in drug-resistant tuberculosis.

Global economy resistant to transnational crime. Financial integrity and the fight against tax evasion are essential in this regard. Transnational organised crime directly affects states' public financing capacities and can hamper economic development through tax evasion and illicit financial flows [5].

This is particularly dangerous for developing countries because it deprives state treasuries of much-needed finance for investment in public goods such as health, education and infrastructure. Transnational organised crime can also undermine a country's economic stability by draining currency reserves and affecting asset prices. Money laundering involves a wide range of financial, legal and commercial actors who deliberately help criminals to turn the profits of crime into assets that cannot be traced back to the original crime and channel illicit funds into the legal economy. According to the International Monetary Fund, illicit financial flows involve the cross-border movement of money whose source, transfer or use is illegal. These flows can have consequences for local markets and companies [6].

For example, in several advanced economies, illicit financial flows have distorted housing markets, such as in Germany and the UK, exacerbating housing problems for local residents. As the Panama Papers and subsequent Pandora Papers leaks have shown, a vast global "offshore" economy operates in parallel with the legal international economy, with around 10% of the world's wealth hidden in offshore financial assets by many of the world's wealthiest and most powerful individuals and entities, including former heads of state, heads of government and public officials, as well as members of the business elite [7].

The influence of organised crime on the environment. Transnational organised crime has also undermined environmental conservation and sustainable management of natural resources. Organised environmental crime is a broad area ranging from illegal logging, illegal extraction of natural resources and trade in protected species to the storage of banned chemicals and waste. While the immediate impact is often localised, with devastating effects on communities and ecosystems, the consequences can also be global. For example, organised environmental crime appears to be a major driver of deforestation in Central and South America, damaging biodiversity and releasing large amounts of carbon that contribute to global climate change [8].

Another example is the illicit production and smuggling of synthetic refrigerants, hydrofluorocarbons (HFCs), which undermine the achievements of the Montreal Protocol [9] in reducing the production and use of ozone-depleting substances. HFCs are considered "super pollutants" because they can be hundreds or thousands of times more potent than carbon dioxide in contributing to climate change per unit mass. There has been significant smuggling of HFC refrigerants in Europe, an unintended consequence of the gradual reduction in HFC production, skyrocketing

prices and the low risk of serious penalties for smuggling.

Organised environmental crime has grown rapidly as a result of being highly profitable but presenting low risk. For example, a study conducted on a small sample of 27 cases of illegal dumping of waste and toxic materials found that they generated between $175,000 and $58 million in revenue. The lack of consensus on what constitutes organised environmental crime, countries' different approaches to criminalisation and enforcement, and criminals' "forum seeking" have allowed many to evade legal liability.

Peace and international security. Organised crime undermines international peace and security by supporting violence and armed conflict. The illicit arms trade ranks as the third largest illicit market worldwide. The illicit flow of arms escalates conflicts and increases the risk of conflict and facilitates violent crimes and other organised criminal activities [10].

In conflict zones, non-state armed groups engage in illicit markets as a means of support, including through illicit extraction and trade in natural resources and various forms of smuggling. However, the involvement of non-state armed groups in transnational criminal markets is often overshadowed by the role of state actors, highlighting the close links between transnational organised crime, political power and public institutions, as well as corruption in many parts of the world.

Annual victims' rates caused by organised crime often far exceed by far those caused by armed conflict. Violence linked to organised crime affects several countries in Central and South America in particular. The corrosive transnational effects of organised crime-related violence are increasingly visible in Central and South America as destabilisation and violence spread to some of the region's smaller, previously peaceful countries.

The challenge the international community now faces is how to address transnational organised crime as an obstacle to development and, at the international level, how to prevent it from undermining global public goods.

Multilateral responses to transnational organised crime. The 2000 UN Convention against Transnational Organized Crime (UNTOC) [11] is the main legal instrument to combat transnational organized crime and sets legislative standards for states. The UNTOC and its protocols are currently under review by member states. The UN Office on Drugs and Crime (UNODC) is the secretariat for UNTOC and other major international legal instruments to combat transnational organised crime, including the 2003 UN Convention against Corruption. The UNODC's two governing bodies are the UN Commission on Crime Prevention and Criminal Justice and the Commission on Narcotic Drugs. Both have mandates that include issues related to transnational organised crime [10].

The International Criminal Police Organization (INTERPOL), an intergovernmental organization, provides support for national law enforcement efforts against organized crime, including transnational organized crime. Within the European Union (EU), EUROPOL conducts crime and terrorism analysis and supports the law enforcement efforts of Member States, as well as cooperation with partner states outside the EU and international organisations.

Unfortunately, multilateral efforts to develop collective responses to transnational organised crime have been weak and fragmented, and the current cooperation regime has been described by the Global Initiative against Transnational Organised Crime as ineffective and outdated. A 2019 Global Initiative Report concludes that 79 of the 102 UN entities, bodies and agencies have mandates that address a particular dimension of organised crime, while several other multilateral organisations are also engaged in efforts to combat the problem and have a different vision. Despite the UN's wide coverage, the report says, it does not have a coherent strategy on combating transnational organised crime and instead adopts a fragmented approach.

The UNTOC has struggled to remain relevant in a context of rapid adaptation to change of criminal groups and a lack of enthusiasm expressed by member states for using the convention as a basis for cooperation. Some powerful states prefer informal and unilateral solutions to deal

with transnational organised crime to the use of complex and slow-moving formal international channels; however, these approaches often lack oversight and challenge the rule of law and human rights.

The institutions directly responsible for preventing and combating this phenomenon must take into account technical and scientific aspects, forensic characteristics of organised criminal groups, geographical location, ethnic and linguistic links and other specific aspects in order to elucidate the causes and conditions that generate the emergence and consolidation of organised crime on the territory of the Republic of Moldova [12].

Conclusions. Some aspects that would be essential in the fight against organised crime include:

Coordination: an integrated international action is crucial to identify, investigate and prosecute the individuals and groups behind these crimes.

Education and awareness-raising: ordinary citizens should learn more about organised crime and how it affects everyday life. Voice your concerns to policy-makers and politicians so that this truly global threat is considered by politicians as a top priority among major public concerns. Consumers also have a key role to play: know what you are buying, do it ethically and make sure you are not fuelling organised crime.

Information and technology: criminal justice systems and conventional law enforcement methods are often ineffective against powerful criminal networks. Better information methods need to be developed through the establishment of more specialised law enforcement units, which should be equipped with the latest technology.

Assistance: Developing countries need assistance to strengthen their capacity to counter these threats. One important instrument that can help with this is the United Nations Convention against Transnational Organised Crime, which has been ratified by 170 parties and provides a universal legal framework to help identify, deter and dismantle organised criminal groups..

Reinvigorating multilateralism against transnational crime. The response to transnational organised crime and corruption should be taken into account in the process of reinvigorating multilateralism. There are two key tasks for strengthening multilateral responses to transnational organised crime. First, efforts should be made to develop a more comprehensive understanding of how transnational organised crime and corruption undermine essential global public goods. Second, the political will must be created to work through effective instruments of international cooperation.

In addition, a common response and strategy to combat transnational organised crime in conflict prevention, peace operations and consolidation must be addressed in the "New Agenda for Peace" [13], a UN report that, as promised by Guterres, will respond to profound changes in the global environment and establish mechanisms and collective responses to traditional and emerging threats to peace and security. A more holistic vision and approach is needed that goes beyond purely criminal responses and addresses the development, human rights and security implications of transnational organised crime and corruption for some of the world's most vulnerable populations.

The Moldovan authorities, with the support of international organisations, have been working to address these challenges. However, the effectiveness of these measures has fallen short of expectations and combating organised crime often requires a comprehensive approach that includes legal reforms, law enforcement cooperation and international collaboration.

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REGARDING SOME LEGAL AND ETHICAL ASPECTS CONCERNING THE USE OF ARTIFICIAL INTELLIGENCE IN FORENSIC ACTIVITIES

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Summary

The article contains descriptions by way of examples of the legal aspects of applying artificial intelligence algorithms in the detection, investigation, and prevention of crimes. It notes the advanced experience in this field of certain states and the impact on crime investigation processes. It is pointed out that some police structures use artificial intelligence for predicting crime in specific localities or territories. The areas of application of artificial intelligence in maintaining public order and combating crime are mentioned, as well as the legal and ethical aspects of applying artificial intelligence in the process of investigating or preventing crimes.

Keywords: artificial intelligence, crime investigation algorithms, crime prevention, information analysis, digitization of criminal investigations, artificial neural networks.

Introduction. Artificial intelligence (AI) is the use of digital technology to create systems capable of performing tasks typically requiring human intelligence [1]. This definition of AI is used by the Council of Europe in the process of drafting and voting on European regulatory acts regarding the application of AI in human activities, economic development, healthcare, transportation development, natural disaster prevention, protection of fundamental human rights, etc. At the international level, the European Union is among the first state organizations to impose regulations on the application and use of artificial intelligence in people's daily lives. As a result, discussions about the utility of AI and the dangers to which humanity could be exposed have divided society into two camps. There are those who support the most advanced implementation of these digital technologies and those who believe that AI presents a dangerous future for humanity, based on its potential to become a threat to security, ethics, and the autonomy of the human species. There are concerns about the possibility of AI being misused in a way that could endanger lives or human rights. There is also a fear that AI could surpass its capacity for control and become too powerful or unpredictable to be kept in check [2].

It is argued that the human species currently dominates other species because the human brain has some distinctive capabilities that other animals do not possess. If AI surpasses humanity in general intelligence and becomes "superintelligent," then it could become difficult or impossible to control by humans. Just as the fate of some animals depends on human goodwill, so too the fate of humanity could depend on the actions of a future superintelligent machine [3]. In the context of the regulations imposed by the European Union regarding the use of AI, it is worth noting that four levels of risk have been identified regarding the use of AI: a minimal or non-existent risk level (e.g., video games, spam filters – areas that will largely not be regulated), a limited risk level (e.g., chatbots – AI systems that pose only limited risks will be subject to very few transparency obligations, such as disclosing that their content was generated by AI, so that users can make in-

formed decisions about further use), a high-risk level (e.g., granting bank loans, managing public transportation, evaluating individuals' performance in various assessments and exams - a wide range of high-risk AI systems will be authorized, albeit subject to a set of requirements and obligations to access the EU market), and an unacceptable risk level (e.g., behavioral-cognitive manipulation, predictive policing activities, emotion recognition in the workplace and educational institutions, as well as social behavior assessment). Remote biometric identification systems, such as facial recognition, will also be prohibited, with some limited exceptions [4]. We observe that from the very beginning, the European legislator limits the possibilities of applying AI in certain areas of police activity.

Discussions and results obtained. Regardless of the concerns and risks discussed in society, victims of crimes or offenses, investigative officers, and prosecutors always wish to use advanced scientific tools that lead quickly to the identification of criminals and their whereabouts. In this sense, the emergence and development of artificial intelligence as a useful tool in various social fields have created a very useful premise and opportunity to be applied in the discovery, investigation, and prevention of crimes. Artificial intelligence is traditionally understood as complex computer programs capable not only of acting according to a predetermined algorithm but also of implementing creative functions inherent to humans, such as forecasting, risk assessment, working with incomplete data, etc. In certain spheres of human activity, some artificial intelligence systems are already actively used or beginning to be implemented, for example, in banking, military technologies, advertising, insurance business, medicine, agriculture, etc.

Forensics has always been very receptive to potentially useful technologies for the discovery and investigation of crimes; for this reason, we are very interested in analyzing the perspectives of using artificial intelligence. The renowned artificial intelligence researcher J. Copeland [5, p.7, 8, 15] proposes two approaches to understanding it: bottom-up and top-down. In the first approach, it is about the applied modeling of individual components (processes) of human thinking to solve specific and highly specialized tasks. This approach to understanding artificial intelligence is already actively used in the development and implementation of expert systems, automated databases, etc., in the field of crime detection and investigation. From the perspective of the bottom-up approach to understanding artificial intelligence, the latter involves full-fledged behavior or thinking, namely the complex evaluation of received messages and making balanced decisions based on them in conditions of incomplete and fragmented information.

Analyzing multiple bibliographic sources regarding the application of AI in crime research and law enforcement activities [6; 7], we believe that AI is applied for:

1. Data analysis: Artificial intelligence is used for data analysis and identifying patterns in the information collected during investigations. This can help identify trends and connections between different cases.

2. Facial recognition: AI-based facial recognition systems are used to identify suspects or missing persons in images or video recordings.

3. Analysis of digital fingerprints, firearm traces, and other types of traces: Artificial intelligence can be used for comparing and identifying digital fingerprints, traces on tubes, and bullets in local forensic databases and the framework of forensic information exchange.

4. Creation of information and investigation systems: Police in several states use advanced computer systems to manage and analyze information related to crimes and suspects. These systems can provide support in decision-making and directing investigations.

5. Crime prevention (predictability): By analyzing data and patterns, artificial intelligence can help police anticipate and prevent crimes in certain areas or contexts.

Among the first countries where artificial intelligence has started to be applied in ensuring public security and combating crime, we could exemplify the Netherlands, the USA, the United Kingdom, and others. For example, the Dutch national police have adopted neural networks to as-

sist in case investigations. The system drastically reduces the time spent managing cases. A special automatic algorithm examines case files, helps classify them, and prepares them for investigation. Artificial intelligence reviews documents, analyzes them, examines evidence, and determines the likely level of case complexity. Therefore, neural networks [8] are not able to solve a criminal case on their own, but they do a lot of routine work. According to law enforcement agencies, AI prepares cases in a matter of days, while it may take a police officer several weeks. For example, neural networks are connected to the national DNA database and can therefore uncover common details in seemingly different cases and find missing evidence. As an experiment, artificial intelligence has examined over 1,500 criminal cases across 30 million printed pages. "This type of system does more than just mechanical work; it can see the connection between certain events", emphasizes police officer Roel Wolfert [9] about the utility of neural networks.

In the practice of crime discovery and investigation, automated information search systems are actively used to obtain information on possible investigative directions: the "Block" [10] system, which provides forensic information support for investigating economic crimes; the "Maniac" system, which provides information in the investigation of serial crimes [11, p. 423-430]; the I2 analysis system, which helps establish the contact links of criminals and their interaction with various individuals and institutions [12]; the "Mirror" geographic information system, which operates with spatial data (factual and statistical), and many others [13].

Such digital systems contribute to improving management efficiency by automating activities and the functioning of law enforcement agencies, allowing for a significant reduction in the time costs for decision-making in a specific legal situation, providing enhanced quality and a clearer rationale for the decision made. This becomes possible because any intelligent system is largely the result of the accumulation of all available knowledge in a particular field. In digital systems, human intelligence is used in a concentrated form to solve standard situations in various fields of knowledge, and in these cases, the recommendations issued by the machine are advisory in nature, the decision belonging to the person responsible for the case, although these decisions represent a new, superior level of quality [14].

If we go back in history, digital fingerprints have become a tool for proving guilt or innocence, as well as a means of evidence and identification of individuals in the 19th century [15]. Forensic science did not start with digital fingerprints, but it was the method that captured people's imagination more than any other innovation. Currently, digital fingerprint databases are a norm, but even this is becoming outdated, with the forefront being occupied by genetic profiling, which provides investigative and judicial authorities with more precise methods of personal identification. DNA technology was discovered in 1984 by British geneticist Alec Jeffreys [16]. Analogous to unique digital fingerprints, each person has their own "genetic passport". A reference sample is taken from the person under investigation and compared to the one found at the crime scene. The trace left by a perpetrator is not limited to just a digital fingerprint - a sample can be obtained from blood, saliva, semen, or other suitable liquids or tissues from personal items, such as a toothbrush or a razor, objects touched by the person with hands or lips...). The methodology has already become fully applicable among forensic experts. It is more scientific, meaning more reliable and precise. Within the DNA profile, experts analyze the number of repetitive elements in a selected section of the genome. The accuracy of identification depends on the number of genomic regions analyzed: the more regions, the more precise the results [14]. The polygraph is another technique that "struggles to prove its effectiveness". The latest advancements in polygraph technology include the use of more advanced sensors and data analysis algorithms to improve the accuracy and reliability of polygraph tests. Progress has also been made in developing "non-invasive" technologies that can detect signs of deception without the need for physical sensors on the subject's body. Another significant advancement in polygraph technology is the integration with other technologies. Currently, the results of polygraph activity depend primarily on the expertise

of the examiner conducting the test and the accuracy of the questions asked. The technology itself is partially recognized in some states, not recognized at all in others, and a number of states admit polygraph test results as evidence in legal proceedings. Working with the polygraph will soon undergo fundamental changes. Psychophysiological research through simultaneous detection of changes in breathing, cardiovascular activity, skin resistance, and other physiological parameters will be complemented by the analysis of brain response using electroencephalography (EEG) and magnetic resonance imaging (MRI).

Currently, almost all new cars are equipped with "intelligence": GPS navigation systems, video recording systems, Bluetooth, which allow the driver and passengers to connect their smartphones to the car, etc. The data that users transmit and receive while in the car can be recorded. There is also an internal "computer" responsible for regulating and maintaining temperature and air conditioning, lighting, wipers, cruise control, and more. All of this metadata can be used in forensics. The car will be able to tell us when and where the doors were opened, the trunk, whether seat belts were fastened, if there was an emergency braking or acceleration. All of these can represent valuable forensic information. Officers can use them when investigating traffic accidents, car thefts, the use of vehicles in the commission of crimes, etc. The car can "tell" where and when it traveled, what messages passengers sent and when they called, what websites they visited [17. p. 491].

The most advanced method of using AI in forensic work is predictive analysis. It is believed that a police system is more useful and achieves remarkable success when it prevents crimes, rather than just detecting and investigating them. There is great enthusiasm for using AI in the field of criminal investigation and crime prevention. This enthusiasm is linked to a strong belief that experimenting with new technologies can enhance security as well as improve government efficiency. It is believed that new digital systems lead to rational, scientific, and value-neutral ways of generating knowledge and expertise in the field of criminal justice. Artificial intelligence in this field, therefore, occupies a central position not only in policy documents but can also be observed in numerous examples from practice. The Dutch police are at the forefront of predictive policing practices, at least in Europe, being the first to deploy an AI-based predictive policing system at a national level, and continue to establish an increasing number of predictive policing projects [18].

Artificial Intelligence (AI) plays an increasingly important role in predicting crime, providing tools and technologies that can help authorities anticipate and prevent crimes. Here are a few ways in which AI can be used in this regard:

1. Data Analysis: AI can analyze massive amounts of data, including historical crime data, patterns of criminal behavior, modus operandi, locations where crimes are likely to occur, risk factors, and other relevant information. By using machine learning algorithms, AI can identify patterns and trends associated with criminal activities. Data analysis is a crucial aspect of using AI in crime prediction. Machine learning algorithms enable AI to identify complex correlations and relationships between different variables in the analyzed datasets. For example, AI may discover that certain types of crimes are more likely to be committed in a specific geographic area, during certain time periods, or under certain socio-economic conditions. Additionally, AI can identify risk factors that may contribute to increased criminal activity, such as poverty, lack of education, or high unemployment rates. Through data analysis, AI can generate predictive models that can be used to anticipate future criminal behaviors. These models can guide authorities in preventing crimes or allocating resources efficiently where there is the highest potential for crime occurrence. It is important to note that data analysis conducted by AI is not perfect and there is a risk of generating false or incorrect results, depending on the quality of input data or algorithms used. Therefore, it is crucial that the use of AI in crime prediction be properly supervised and regulated to ensure its accuracy and ethical use.

Therefore, it is crucial that the use of AI in crime prediction be properly supervised and regulated to ensure transparency, ethics, and respect for fundamental human rights. The technol-

ogy company PredPol – short for Predictive Policing – claims that its data analysis algorithms can improve crime detection by 10-50% in some cities. It requires years of historical data, including the type, location, and timing of crimes, and combines this with a wealth of other socio-economic data, which is then analyzed by an algorithm initially designed to forecast aftershocks of earthquakes. The software attempts to predict where and when certain crimes will occur in the next 12 hours, and the algorithm is updated daily as new data emerges. "PredPol was inspired by experiments conducted by the University of California in collaboration with the Los Angeles Police Department", says PredPol co-founder and anthropology professor Jeff Brantingham. This study demonstrated that algorithm-based predictions could forecast twice as much crime and, when used in the field, could prevent twice as many crimes as the best existing practices. The predictions are displayed on a map using color-coded boxes, each representing a 500-square-foot area. Red boxes are classified as "high-risk", and officers are encouraged to spend at least 10% of their time in these territories [19].

2. Early Warning Systems: Relying on data analysis, AI can develop early warning systems that can identify areas or situations with an increased potential for crime. These systems can help authorities take preventive measures to reduce the risk of crimes. By analyzing historical data and identified risk factors, AI can identify patterns and trends that indicate an increased likelihood of crimes occurring in a specific area or under certain conditions. This information can be used to develop predictive models that provide early warnings to authorities about possible imminent criminal incidents. Early warning systems based on artificial intelligence can be extremely valuable for authorities, allowing them to allocate resources efficiently and intervene proactively to prevent crimes. For example, if a predictive model indicates a sudden increase in crimes in a particular area, authorities can intensify police patrols or implement additional security measures to deter criminal activities. It is important to emphasize that these early warning systems are not infallible, and there is a risk of generating false alarms or misinterpreting data. Therefore, it is crucial for authorities to use this information as a complementary tool in decision-making, rather than as the sole source of information.

3. Facial and Pattern Recognition: Facial recognition and pattern recognition technologies can be integrated into surveillance systems to identify suspicious individuals or track their movements. These technologies can be used to identify known criminals or prevent crimes. These technologies use algorithms and machine learning models to analyze facial features or individual patterns and compare them to an existing database or other relevant information. Through facial recognition, surveillance cameras can identify and track individuals based on their unique facial characteristics, such as face shape, eyes, nose, or mouth. This technology can be used to identify suspicious individuals or monitor their presence in a specific location. As for pattern recognition, it refers to the ability of systems to identify and track individual patterns, such as specific movements or behaviors of a person. These patterns can be used to detect suspicious activities or monitor a person's behavior in a particular context. Integrating these technologies into surveillance systems can be useful for authorities in monitoring and preventing crimes, but it also raises certain issues related to privacy, security, and personal data protection. It is important that the use of these technologies be regulated and comply with ethical and legal standards to ensure the protection of rights and to prevent abuses or their inappropriate use.

The Chinese government extensively uses facial recognition in its surveillance systems to monitor and identify individuals in public spaces [20]. Additionally, Chinese companies such as Alibaba and Huawei develop and implement facial recognition technologies for various applications, such as mobile payments and cybersecurity. In the US, government agencies like the Department of Homeland Security and the Department of Justice use facial recognition technologies to identify criminals and ensure national security. Furthermore, companies like Amazon provide facial recognition services to private sector clients [21]. The Russian government utilizes facial rec-

ognition technologies in its security and surveillance systems. Russian companies like NtechLab also develop facial recognition solutions for various industries, such as retail and security [22].

European Union: In the European Union, there are concerns regarding the protection of personal data concerning the use of facial recognition technologies. However, Germany uses these technologies in their security and surveillance systems.

Behavioral Analysis: AI can be used to analyze individuals' behavior and identify behavior patterns that may be associated with criminal activities. Behavioral analysis is a branch of artificial intelligence that focuses on studying and interpreting individuals' behavior to identify specific patterns or trends. This technology uses advanced machine learning algorithms to analyze data related to a person's behavior, such as movements, gestures, speech, or other actions, and to identify signals or cues that may indicate certain types of behavior, including criminal activities. By using AI-based behavioral analysis, systems can learn to recognize and identify behavior patterns associated with criminal activities, such as theft, aggression, or other crimes. These patterns may include changes in a person's movements, reactions to certain stimuli, or other unusual or suspicious behaviors. For example, a surveillance system equipped with behavioral analysis technologies could automatically detect aggressive behavior or shoplifting based on a person's movements or gestures and could alert security personnel or relevant authorities to intervene. The use of behavioral analysis to identify criminal activities poses certain challenges and issues, such as personal data protection, confidentiality, and the potential for errors or discrimination. Therefore, it is crucial for these technologies to be implemented and used in accordance with ethical and legal standards to ensure respect for individual rights and prevent abuses.

Conclusions. The development of forensic techniques for the future will take place through the use of AI. The directions of development will focus on advanced behavioral analysis: developing and improving behavioral analysis algorithms to more efficiently identify and interpret behavior patterns associated with criminal activities. This could include the use of facial recognition technologies, natural language processing, voice tone analysis, and other techniques to detect suspicious or unusual behaviors, as well as the use of facial and object recognition technologies to identify and track suspects and vehicles involved in crimes.

Law enforcement, through the use of AI, will develop intelligent monitoring and crime detection systems that will analyze and interpret data in real-time to identify suspicious or illegal activities. These systems could be implemented in public places such as airports, markets, and shopping centers to prevent and quickly intervene in case of crimes.

Law enforcement agencies will increasingly use AI to analyze and interpret large volumes of data to identify patterns and trends in criminal behavior. This could include developing machine learning algorithms to create behavioral profiles of offenders and anticipate possible future criminal actions.

The development of intelligent systems for collaboration and information exchange between law enforcement agencies and other organizations involved in crime prevention and combat, which could facilitate the rapid and efficient exchange of relevant information and data to identify and intervene in criminal activities in a more efficient and coordinated manner (in this regard, INTERPOL, EUROPOL, and other interstate structures for combating transnational crime operate effectively).

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RESOLVING CONFLICTS BETWEEN TWO TAX SOVEREIGNS IN THE LIGHT OF THE ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT (OECD) MODEL CONVENTION

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Summary

The conflict between two tax sovereignties can be resolved by granting the right of taxation to one of the Contracting States or by sharing the right of taxation proportionally between the Contracting States. The concept of fiscal sovereignty is therefore viewed differently from that of political sovereignty. We can speak of a territorial entity which, regardless of whether or not it enjoys political sovereignty, has fiscal sovereignty, with a system that has two characteristics: technical autonomy and exclusivity of application. The technical autonomy of the tax system consists in the fact that it contains all the rules necessary for it to function in its own right. The condition of exclusivity of application is achieved by the fact that the tax system applies itself, to the exclusion of the application of other systems, to a given territory, where it is the sole provider of tax resources. The sovereign political and fiscal state cannot exercise any fiscal power outside its territory. Fiscal sovereignty is relative. The principle that tax laws are inapplicable in the territory of another State does not mean that they may not apply to assets located outside its territory and to persons operating outside its territory. Conversely, if it is the State which creates and applies taxes, it may, on its own initiative, accept derogations of a legislative or treaty nature in order to avoid double taxation. However, it is not enough to avoid double taxation to determine by regulation which state will have the exclusive right to tax one category of income or another, or to specify the conditions under which states will share this right between themselves. Tax treaties cannot resolve the situation where each Contracting State taxes one and the same person, who is not a resident of either Contracting State, on income arising in a Contracting State or on wealth held there, because tax treaties apply only to residents. However, this situation can be resolved separately by mutual agreement.

Keywords: tax sovereignty, tax treaty, double taxation, contracting state, dispute over tax, income, resident, state.

Introduction. The conflict between two fiscal sovereignties [1, p. 25], can be resolved by granting the right to tax to one of the Contracting States or by sharing the right to tax, proportionally, between the Contracting States. Thus, the concept of fiscal sovereignty is viewed differently from that of political sovereignty. Tax territory may not coincide with the territory of a sovereign state. For example, in France the so-called overseas territories – "territoires d'outre-mer" (TOMs) – have their own system developed by their own Territorial Legislative Assemblies and the tax laws voted by the French Parliament do not apply to them. However, fiscal and political sovereignty can often be confused. Here we can speak of the territorial entity which regardless of whether or not it has political sovereignty, has fiscal sovereignty and has a system with two characteristics [2, p. 417]: *technical autonomy* and *exclusivity of application.*

The technical autonomy of the tax system consists in the fact that it contains all the rules necessary for it to function on its own. The condition of exclusivity of application is achieved by the fact that the tax system applies itself, to the exclusion of the application of other systems, to a given territory, where it is the sole provider of tax resources. The sovereign political and fiscal state cannot exercise any fiscal power outside its territory. Fiscal sovereignty is relative. The

principle that tax laws are inapplicable in the territory of another state does not mean that they may not apply to assets located outside its territory and to persons operating outside its territory. Conversely, if it is the state which creates and applies taxes, it may, on its own initiative, accept derogations of a legislative or treaty nature in order to avoid double taxation. However, it is not sufficient to avoid double taxation to determine by regulation which state will be entitled to tax exclusively one category of income or another, or to specify the conditions under which states will share this right between themselves [1, p. 4-5].

Tax treaties cannot resolve the situation where each Contracting State taxes one and the same person, who is not a resident of either Contracting State, on income arising in a Contracting State or on wealth held there, because tax treaties apply only to residents. However, this situation can be resolved separately by mutual agreement. To avoid double taxation as such, international tax practice [3, p. 81] uses one of two *technical* methods or *procedures*: the exemption method or the credit method, each with two variants. Thus exemption can be total or progressive and crediting can be total or ordinary. So, we use the following techniques: the total exemption (relief) method, the progressive exemption (relief) method, the ordinary "crediting" (imputation) method and the full "crediting" method. Under this method, the State of residence of the recipient of a given income does not tax income which, according to the provisions of the tax treaty, is taxable in the other State, i.e. in the State of source, or in the State where the taxable person has a permanent establishment or fixed base. Where a resident of a Contracting State derives income or possesses wealth which, under the provisions of the OECD Convention, is taxable in the other Contracting State, the State of residence shall exempt such income or wealth from tax, subject to the exceptions set out below (Article 23A(1) of the Convention). Where a resident of a Contracting State derives items of income which, according to the provisions of the articles of the OECD Convention relating to dividends (Article 10) and interest (Article 11), are taxable in the other Contracting State, the State of residence shall grant a reduction equal to the tax paid in the other Contracting State in the tax it levies on the income of that resident. This reduction may not, however, exceed the fraction of the tax, calculated before the reduction, corresponding to the items of income communicated to it by the other Contracting State (Article 23A (2) of the Convention). Where, under any provision of the Convention, income derived by a resident of a Contracting State, or wealth possessed by him, is exempt from tax in that State, that State may nevertheless, for the purpose of calculating the tax on the remainder of the income or wealth of that resident, take into account the exempt income and wealth (Article 23A(3) of the Convention) [4].

As already mentioned, the exemption method has two variants: the total or full exemption method and the progressive exemption method.

Total exemption method. Under this method the State of residence of the recipient of the income will not take into account the income of a resident of that State in determining his taxable income in the source State or income from a permanent establishment or fixed base in the other Contracting State. It shall take into account only the remainder of the taxable income. "To disregard a particular income is to exempt it from tax." The State of residence disregards the existence of tax-exempt income when calculating the resident taxpayer's taxable income in that State. If the full exemption method is adopted, the two States signatory to the Convention agree, for example, that income earned by taxpayer X, a resident of the Republic of Moldova, in the territory of Y, is exempt from tax in Moldova and is taxed only abroad. State Y does the same with income earned in Moldova by one of its residents – it does not tax it.

According to the *total exemption (exemption) method*, income earned by a resident of a country in a foreign country ($_{Vis}$) and subject to taxation in that country is taken from the overall taxable income ($_{Vig}$) in the country of residence, the following relationship is used for this purpose:

$_{Vitr} =_{Vig-Vis(l)}$ where:

$_{Vitr}$ – taxable income calculated for the country of residence.

For example, a French resident earns income of €4,000 in Morocco, which is taxed at 25%, and income of €6,000 in France. In France, let us assume that the scale of taxation is as follows:

4.000€.....20%;

6.000€.....30%;

10.000€.....45%;

– the tax due to the country of residence is determined without taking into account income earned abroad:

$_{IF}$ = €6,000 - 30%;

$_{IF =}$ €1,800.

To illustrate this variant of the total exemption from taxation method, we will present another practical example where, thanks to its application, double taxation is avoided.

Assuming that the total income of the taxable person is $100,000 of which $60,000 is earned in the State of residence and $40,000 in the source State, and considering the tax rate in the State of residence to be 30% for income between $60,000 and $100,000 and 25% for income up to $60,000, and the tax rate corresponding to income earned in the source State to be 20%, it is possible to determine with precision the practical application of the full exemption from taxation.

Thus:

State of residence taxes $60,000 at 25% = $15,000.

Source State taxes $40,000 at 20% = $8,000.

Total tax is = 23 000.

If there were no double taxation agreement between the State of residence of the taxable person and the State of source of the income, the total tax would be $38,000. Income earned by the taxable person in the source State is disregarded in the State of residence, and as a consequence the tax exemption is $1, 000 (38,000 – 23,000 = $15,000) [5, p. 177-180].

Progressive exemption method. Under this method, income taxable in the other Contracting State (which is the source State of the income, the State in which the permanent establishment or fixed base is located) is not taxed in the State of residence of the recipient of that income. Instead, the latter State retains the right to take that income into account when determining the tax on the remainder of the income. The same applies to the taxation of wealth.

If the progressive exemption method is adopted, income earned abroad by a resident of the Republic of Moldova is not taxed in Moldova, but the taxpayer's state of residence (the state of the Republic of Moldova) will be entitled to take into account the foreign income in the calculation of the corporate income tax as if it had been earned entirely in Moldova. So, if the taxation is progressive, the taxation will be done at the rate of all income. As taxation is done by installments (by groups of income), the rate for all the Moldovan taxpayer's income will apply only to income earned in Moldova (not to income earned abroad).

The *progressive exemption method* involves adding the income earned by the resident of a country abroad to the income earned in the country of residence, thus obtaining the overall taxable income. The appropriate progressive rate is applied to this income.

For the purpose of determining the tax, the established rate is applied only to income earned in the country of residence.

Using the progressive exemption method, using the data given above (a French resident obtains income of €4,000 in Morocco, which is taxed at 25%, and income of €6,000 in France. In France, let us assume that the scale of taxation is as follows: €4,000 – 20%, €6,000 – 30%, €10,000 – 45%), the tax is determined as follows:

– income earned both at home and abroad is aggregated:

$_{Vt}$ = €6,000 + €4,000;

Vt $_{=}$ €10,000.

– the tax rate (Qp) is determined for the total income (Vt), which is 45%;
– determine the tax due to the country of residence (Itr) with the relation:
$_{Itr=Vitr}$ -$_{Cip}$ (2) i.e.:
$_{Itr}$ = €6,000 - 45%;
$_{Itr}$ = €2,700.

Let us give another example [6, p. 66]. Again, as mentioned above, assuming that the total income of the taxable person is $100,000 – of which $60,000 is earned in the state of residence and $40,000 in the source state – and considering the tax rate in the state of residence as 30% for income between $60,000 – $100,000 and 25% for income up to $60,000, and the tax rate corresponding to the income earned in the source State as 20%, it is possible to determine with precision the practical application of the full exemption from taxation as well as that of the graduated exemption.

Thus:
State of residence taxes $60,000 at 30% = $18,000;
State of source taxes $40,000 at 20% = $8,000;
Total tax = 26,000.

In the case of the graduated exemption, income earned by the taxable person in the source State is not taxed in the State of residence, but is taken into account in calculating the overall income tax. The tax exemption is therefore 12 000 (38 000 - 26 000 = 12 000).

The total tax would have been 38 000 (30 000 resulting from taxing in the State of residence the amount of 100 000 at 30% and 8 000 resulting from taxing in the State of source the amount of 40 000 at 20%). On the basis of the application of the above two variants of the exemption from taxation method, the avoidance of double taxation of income is achieved.

However, certain difficulties may arise, since most national laws of the various States contain specific provisions according to which some exemptions from tax are granted to certain categories of taxable persons and thus the amount of income exempted from taxation may ultimately vary.

For these reasons, the provisions of the Model Treaty leave open the choice of practical ways of applying the exemption in progression.

Credit method. In this case [7, p. 1067] the State of residence calculates the tax payable by a resident of its State on the basis of the total volume of that taxpayer's income. This means that in taxable income the State of residence will include income taxable in the source State or in the State in which the taxable income-producing asset is located, as well as income taxable in the State in which the permanent establishment or fixed base is located. It will not, of course, take into account income and wealth which are taxable only in the other Contracting State. The State of residence will deduct the tax paid by the taxpayer in the other Contracting State from the total taxable income (or wealth).

The OECD Model Tax Conventions provide an alternative to the above methods, giving Contracting States the option of choosing the solution they consider most appropriate.

Under the OECD Convention, where a resident of a Contracting State has income or wealth which, under the terms of the Convention, is taxable in the other Contracting State, the State of residence grants:

(a) a reduction in the tax it levies on that resident in an amount equal to the income tax paid in the other State;

b) a reduction in the tax which it levies on the wealth of that resident in an amount equal to the tax on the wealth paid in the other State.

This reduction in each case may not, however, exceed the fraction of the income or wealth tax, calculated before the reduction is applied, corresponding to the taxable income or wealth in that State (Article 23 B, paragraph 1 of the Convention).

Where, under any provision of the Convention, income derived by a resident of a Contracting State, or wealth possessed by him, is exempt from tax in that State, that State may nevertheless, for the purpose of calculating the tax on the remainder of such resident's income (wealth), take into account the exempt income (wealth) (Article 23B(2) of the Convention) [8].

The credit method has two variants, namely the full (full) credit method and the ordinary (ordinary or limited) credit method.

Full credit method. Under this method [9, p. 418], the State of residence deducts from the tax on the taxpayer's total taxable income (wealth) the total amount of tax paid by the taxpayer in the other Contracting State. The total credit consists in the fact that in the total income earned by an individual or legal entity in one country, both income earned in Moldova and income from abroad is taken into account for tax purposes as if it had all been earned in Moldova, and a tax is assessed on the total income. For income earned abroad, the Moldovan taxpayer will benefit from a tax credit, i.e. the Romanian state will deduct from the tax on all income earned in the country and abroad an amount equivalent to the tax paid abroad (the state of source of income).

The *full "crediting" (imputation) method* means that the tax paid abroad on income earned abroad is deducted in full from the taxes due in the country of residence, including in cases where the tax paid abroad is higher than the domestic tax on the same income. We consider the same data, presented under the full exemption method, and determine the tax due to the country of residence (France) by the full "crediting" method (a French resident obtains in Morocco an income of €4,000, which is taxed at 25%, and in France an income of €6,000. In France, let us assume that the scale of taxation is as follows: €4,000 – 20%, €6,000 – 30%, €10,000 – 45%), thus:

– income earned both at home and abroad is added together and the total income (Vt) is determined:

$_{Vt}$ = €6,000 + €4,000;

$_{Vt}$ = €10,000;

– calculate the tax on this total income:

$_{IF=10}$,000 - 45%;

$_{IF}$ = € 4,500;

– calculate the tax paid abroad (in Morocco) -$_{IM}$:

$_{IM}$ = 4.000 € - 25%;

$_{IM=}$ 1.000 €;

– determine the tax actually payable in the country of residence ($_{IFp}$):

$_{IFp}$ =$_{IF}$ -$_{Im}$ (4);

$_{IFp}$ = €4,500 - €1,000;

$_{PIT}$ = €3,500.

Another example. Assuming again that the taxable person's total income is $100,000 of which $80,000 is earned in the State of residence and $20,000 in the source State, and taking the tax rate in the State of residence to be 35% for income up to $100,000, and the tax rate in the source State to be 20% (for case 1) and 40% (for case 2), the full credit can be applied.

Case 1:

State of residence taxes 100 000 at 35% = 35 000;

Source State taxes 20 000 at 20% = 4000;

The tax will be = 31000;

Total tax would be = 35 000;

Tax exemption is = 4 000.

Case 2:

State of residence taxes 100 000 at 35% = 35 000;

Source State taxes 20 000 at 40% = 8 000;

Tax would be = 27 000;

Total tax would be = 35 000;

Tax exemption is = 8 000.

As will be seen, under this variant of the credit method, the State of residence taxes the total income at the appropriate rate (100 000 at 35%) and then allows the tax paid in the source State to be deducted from its tax:

35 00 - 4 000 = 31 000 for case l and respectively;

35 000 - 8 000 = 27 000 for Case 2.

Ordinary credit method. In this case [9, p.418] the State of residence deducts, by way of tax paid in the other Contracting State, an amount which may be equal to or less than that actually paid to the source State. Thus, where the tax rates applied in the two Contracting States are identical and where the rates applied in the State of residence are higher than in the source State, the tax credit granted by the latter State is equal to the amount of tax paid in the source State. However, where the rates applied in the State of residence are lower than those applied in the source State, differences arise in that the State of residence reduces the tax payable by the taxpayer concerned by way of tax credit by an amount lower than the tax paid in the source State. Since the tax credit granted by the State of residence to its taxpayer is less than the tax paid in the other State, it follows that the ordinary credit method leads to only partial (limited) avoidance of double taxation.

If the ordinary credit is applied, the Moldovan state grants a tax credit (i.e. a tax reduction) from the tax thus calculated to the total income earned by the Moldovan taxpayer in the country and abroad, but not more than the tax rate applied in Moldova. Let's assume that in Moldova the tax rate is 20% and abroad it is 20%. In this case, the tax credit will be equal to the actual tax paid abroad. If the tax rate abroad is 15% and in the country it is 20%, the legal entity will be charged the tax paid abroad. If, however, the tax rate abroad is 30% and in Moldova it is 20%, the tax calculated at the 20% rate is taken into account, i.e. within the limit of the tax calculated according to the law of the Republic of Moldova. So if the tax rate abroad is higher than the rate in the country, the tax paid abroad is not deducted in full, but within the limits of the tax paid in the country.

The *ordinary "credit" (imputation) method* is that the tax paid to the foreign country on income earned in the foreign country by the resident of the other country is deducted directly from the total tax calculated in the country of residence.

Tax paid abroad is deducted only up to the limit of the domestic tax payable on income equal to that earned abroad.

We use below the data presented under the total exemption method (a French resident obtains in Morocco an income of €4,000, which is taxed at 25%, and in France an income of €6,000. In France, let us assume that the scale of taxation is as follows: €4,000 – 20%, €6,000 – 30%, €10,000 – 45%). To determine the tax due to the country of residence (France) using the ordinary credit method, proceed as follows:

– aggregate income earned both in the country and abroad, and determine the total income ($_{Vt}$):

$_{Vt}$ = €6,000 + €4,000;

$_{Vt}$= €10,000;

– calculate the tax on this total income:

$_{IF=}$ 10.000 - 45%;

$_{IF}$ = 4.500 €;

– we determine the tax paid in Morocco, but only up to the limit of the tax in the country of residence:

at €4,000 - I'_F = 4,000 - 20%;

I'_F = €800;

– we determine the tax actually payable in the country of residence ($_{IFp}$):

$_{IFp}$ =$_{IF}$ - I'_F (4);

$_{PIT}$ = €4,500 - €800;
$_{IFp}$ = € 3.700.

Another example [6, p. 66]. Similarly, assuming that the total income of the taxable person is $100,000 – of which $80,000 is earned in the state of residence and $20,000 in the source state – and considering the tax rate in the state of residence to be 35% for income up to $100,000, and the tax rate in the source state to be 20% (for case 1) and 40% (for case 2), the application of the ordinary credit can be determined.

Case 1:
State of residence taxes 100 000 at 35% = 35 000;
Source State taxes 20 000 at 20% = 4 000;
The tax will be = 31000;
Total tax would be = 35000;
Tax exemption is = 4 000.
Case 2:
State of residence taxes 100 000 at 35% = 35 000;
Source State taxes 20 000 at 40% = 8 000;
Maximum deduction allowed in State of residence = 7 000;
Tax will be = 28 000;
Total tax would be = 35000;
Tax exemption is = 7 000.

The second version of the credit method is more complicated and involves respecting the "maximum allowable deduction" limit. This maximum allowable deduction is the tax on the income earned by the taxable person in the source State, but calculated according to the appropriate rates in the State of residence [10, p. 65].

Specifically, on an income of 20 000, 35% is earned in the State of residence and thus the maximum allowable deduction of 7 000 is established. As a result, even if in fact the tax paid in the source state will be higher than 7 000, the deduction from the residence state tax will always be 7 000. If the tax paid in the source state is less than the amount of the maximum allowable deduction, it will be deducted at its value and not at the value of the maximum deduction.

As can be seen, since the methods of calculation are different, the advantages of this – the relief from tax as a result of the conclusion of a double taxation agreement – also lead to different results. Relief is at its maximum when full exemption is applied or when full credit, which allows full deduction of tax, is applied.

It should also be noted that combinations of these two methods can be found in many treaties [11, p. 46-52]. These are situations where one of the signatory states chooses to use one of the two methods of eliminating double taxation, while the second state chooses to use the other method [7, p. 1068].

We will note from the examples presented that the Republic of Moldova in the double taxation treaties signed with other states has adopted combinations of the techniques or methods concerned. Thus, while the total exemption method is enshrined, the option of using the progressive exemption method is left open, depending on the situation; as regards the crediting method, the contracting parties favour the ordinary credit. Total crediting is accepted less frequently.

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THE ROLE OF THE EUROPEAN UNION COHESION POLICY IN PREVENTING AND FIGHTING TRANSNATIONAL CRIME IN THE MEMBER STATES

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Summary

The EU Cohesion Policy plays a crucial role in preventing and combating transnational crime within its member states. Through European structural and investment funds, the EU supports projects that aim to reduce economic and social disparities between regions, thereby mitigating vulnerabilities that may foster criminal activities. Funded initiatives target strengthening security and justice, promoting transnational cooperation, and exchanging information among member states. These efforts include training programs for law enforcement officers and judges, facilitating an integrated approach to addressing cross-border criminal issues.

However, challenges exist regarding the efficient implementation of projects and ensuring adequate collaboration among member states. By consolidating these efforts and continuing cooperation, the EU can enhance security and stability in the region, effectively countering criminal threats.

Keywords: funds, security, cooperation, crime, transnational, implementation, collaboration.

Introduction. The cohesion policy of the European Union, one of the fundamental pillars of European integration, has as its main goal the reduction of economic, social and territorial disparities between EU regions. It is implemented through the European Structural and Investment Funds, which are allocated to regions and Member States according to their specific needs. The main objectives of the Cohesion Policy include: promoting sustainable economic growth, creating jobs, improving quality of life, supporting innovation and entrepreneurship, developing infrastructure and protecting the environment. Basically, cohesion policy aims to create a fairer and more prosperous European Union, where all regions and citizens benefit from equal opportunities and a high standard of living. Cohesion policy, by promoting harmonious and balanced development in all EU regions, contributes to reducing socio-economic disparities between Member States.

As economic and social convergence increases, vulnerability to negative phenomena such as transnational crime can also be reduced [1]. Combating transnational crime thus becomes a priority in the context of European integration, because a united and cohesive European Union is more effective in managing this phenomenon. Through cooperation between Member States, exchange of information and implementation of common security and justice policies, criminal networks operating across borders can be identified and countered more effectively [2].

Cohesion policy and the fight against transnational crime thus complement each other, helping to strengthen the fundamental values and objectives of the European Union, such as security, solidarity and the protection of the rights of its citizens.

Methods and materials applied. This paper aims to analyze the role of EU cohesion policy in preventing and combating transnational crime in the Member States. In order to achieve this objective, we have adopted a methodology based on a series of research methods specific to the field of European policies and security. Firstly, we carried out *an analysis of relevant documents*

such as international treaties and conventions, European and national legislation on security and judicial cooperation in the fight against transnational crime. This analysis provided us with the legal and institutional framework within which cohesion policy and the instruments available to prevent and combat transnational crime operates.

We carried out *a comparative analysis* of national policies and practices in preventing and combating transnational crime, with a focus on how Member States integrate cohesion policy into their security and justice strategies. This analysis gave us a detailed picture of the diversity of approaches and potential synergies between cohesion policy and national efforts to combat transnational crime.

We consulted academic studies and analyses on the European Union's cohesion policy, its objectives, evolution over time and its impact on regions and Member States.

Information on EU cohesion policy and the proposed reforms has been extracted from official documents of European institutions such as the European Commission, the European Parliament, the Council of the European Union and Europol.

We have referred to reports and evaluations of the implementation of cohesion policy and its effectiveness by specialized organizations and agencies. Information on requirements and standards for combating transnational crime was taken from European Union legislation.

By applying this comprehensive methodology, our paper provides a detailed and reasoned analysis of the role of EU cohesion policy in preventing and combating transnational crime in the Member States. The results obtained can be an important starting point for the development and implementation of effective policies and strategies in this area, to the benefit of the security and stability of the European Union.

Discussions and results obtained. ***1. Presentation of the EU Cohesion Policy and its main objectives***. EU Cohesion Policy, more than thirty years old, has undergone continuous transformations in terms of specific objectives, implementation instruments and financial allocations involved. Although the Treaty of Rome mentioned the promotion of harmonious economic development, there was no explicit reference to a regional policy or a specific fund.

The main intervention instrument, the European Regional Development Fund (ERDF) [3], was only created in 1975, after the first enlargement of the Community. Over time, structural instruments have evolved to reflect the deepening and widening processes of the EU. Debates on the effectiveness of these funds are diverse, with some arguing that they stimulate economic growth and reduce disparities, while others question their effectiveness and suggest that they could lead to fiscal distortions and red tape.

The new Community Regulations on the Structural Funds, introduced in 2006, have brought significant changes to EU cohesion policy, including reorganization of objectives and management [4, p. 55]. Despite debates about their effectiveness, these funds remain crucial for supporting economic development and convergence within the EU.

2. Simplifying and streamlining the European Union's economic, social and territorial cohesion policy for 2021-2027. In the context of the establishment of the European Union's economic, social and territorial cohesion policy for the period 2021-2027, one of the main objectives is the simplification and streamlining of regulatory and procedural frameworks. This is essential to ensure a faster, more coherent and more effective implementation of funds and to reduce administrative burdens for both managing authorities and beneficiaries [5].

The proposal for a Regulation presented in 2018 in Strasbourg underlines the importance of administrative simplification in response to excessive complexity and fragmentation of rules. Several areas of simplification are proposed, such as unifying and standardizing the regulatory framework for the funds, reducing the number of strategic requirements and streamlining regulation for faster and more strategic programming [6].

A major innovation is the translation of the eleven thematic objectives from 2014-2020 into

five policy objectives, thus facilitating the prioritization and transfer of funds by Member States. It is also proposed to strengthen the administrative capacity of Member States through the provision of technical and administrative assistance, helping to improve the implementation of the funds. Standardizing the legislative framework for cohesion policy means providing an accessible and clearer regulatory structure, eliminating overlaps and repetitions in texts, and providing detailed templates for funds, which facilitate implementation. Legislative simplifications also aim to create a level playing field for the implementation of financial instruments, including by mainstreaming them from the start of the programming and implementation process.

Another important aspect is the streamlining of management, control and audit procedures. A proportionate approach to management verifications and audits based on identified risks is proposed, thus reducing administrative burdens and costs. It also introduces the concept of a *single audit* for projects with eligible costs below certain thresholds, simplifying the process and eliminating redundancies.

The simplification and streamlining of the European Union's cohesion policy for the period 2021-2027 is an important step towards more effective and faster implementation of regional and social development funds. These reforms will help reduce administrative burdens, increase transparency and improve the administrative capacity of Member States, thus ensuring a more efficient use of resources and greater cohesion in the European Union. Efforts to simplify, streamline and strengthen the European Union's cohesion policy can have positive implications for preventing and combating transnational crime in the Member States.

3. Defining transnational crime and the importance of combating it in the context of European integration. Transnational crime is the illegal activity or crime that is deliberately planned, organized and executed in more than one country or involves participants and resources from more than one country. This form of crime is characterized by the crossing of national borders and the exploitation of differences in laws, regulations and resources available in different jurisdictions to commit crimes and avoid prosecution [7].

In the context of European integration, combating transnational crime becomes a crucial priority. European integration involves the free movement of persons, goods and services between EU Member States, which creates opportunities and challenges in terms of security and justice. Open borders and increased cross-border cooperation facilitate not only trade and movement, but also the movement of criminals and illegal activities.

The importance of fighting transnational crime in the context of European integration can be highlighted by several aspects:

– Transnational crime can directly affect the security and well-being of European citizens, including through human trafficking, smuggling, terrorism, money laundering and other forms of serious crime. Combating these illegal activities is essential to protect the rights and safety of citizens.

– Fighting transnational crime effectively builds trust between Member States and strengthens cohesion within the EU. Through judicial and police cooperation, Member States can work together to prevent and combat transnational crime, thus promoting solidarity and cooperation within the EU.

– Economic integration and the free movement of goods and services are fundamental to the European single market. However, transnational crime, such as financial fraud, corruption and counterfeiting, can undermine economic integrity and fair competition within the single market. Combating such crimes is essential to protect the EU's economic interests and to ensure a fair and transparent business environment.

– The EU is committed to promoting fundamental values such as the rule of law, human rights and democracy. Transnational crime threatens these values and undermines confidence in the European institutions and the EU's ability to deliver security and justice for citizens. Fighting

transnational crime is therefore essential to protect and promote the EU's fundamental values and principles.

Combating transnational crime is therefore a major priority in the context of European integration, given its impact on the security, stability and integrity of the EU. Through cooperation and coordination between Member States, EU institutions and other stakeholders, an effective and coordinated response to this common threat can be ensured, thereby strengthening security and confidence within the European Union.

4. The problem of transnational crime in the Member States. Transnational crime is a complex and evolving problem in the Member States of the European Union, with a significant impact on their security and stability. This form of crime crosses national borders and manifests itself in a variety of illegal activities, including human trafficking, drug and arms smuggling, money laundering, corruption, financial fraud and terrorism [8]. These criminal activities are not only a threat to law and order but also a significant obstacle to social and economic progress and prosperity within the European Union.

One of the main challenges in tackling this problem is the fragmentation of legislation and judicial systems in the Member States [9]. Differences in legislation can facilitate transnational criminal activities and discrepancies in the judicial system and in law enforcement procedures can complicate cross-border cooperation and the prosecution of offenders. Corruption is also a major factor, undermining efforts to combat transnational crime and compromising the integrity of public institutions and law enforcement.

Technological advances have opened up new opportunities for criminals, allowing them to commit transnational crimes over the internet and other digital technologies. Online fraud, money laundering and cybercrime are just a few examples of the use of technology for illegal purposes, putting the security of data and critical infrastructure at risk [10, p.14]. In addition, migration and human trafficking have become increasingly acute problems, with increased migration flows facilitating human trafficking and exploitation in various illegal activities.

Another aspect of the problem is the financing of terrorism and violent extremism. Terrorist and violent extremist organizations can obtain financial resources from transnational criminal activities and use them to finance terrorist operations and undermine security and stability in Member States [11]. Under the EU-US Agreement on the Terrorist Finance Tracking Program, which entered into force on 1 August 2010, Europol has a key role in verifying requests to the designated EU financial messaging service provider(s) to the United States. In addition to this verification responsibility, Europol has established a single point of contact for its analysis work files and for Member States to coordinate all exchanges with the US related to this agreement, including spontaneous provision of information and search requests from the US on TFTP. The objective of this new collaboration between the US and the EU is to identify, track and criminally investigate terrorist financing [12, p. 29].

A comprehensive and coordinated approach at EU level is essential to address these challenges effectively. Thus, strengthening the capacity to prevent, investigate and prosecute transnational crime is an essential first step. Cross-border cooperation between competent authorities and the promotion of fundamental EU values such as the rule of law, human rights and democracy are also crucial in the fight against transnational crime.

5. The link between cohesion policy and the prevention of transnational crime. Cohesion policy is primarily aimed at reducing economic, social and territorial disparities between EU regions by promoting growth, employment and social inclusion. At the same time, preventing and combating transnational crime is a major concern for the EU, given its impact on regional and global security and stability.

One of the fundamental links between cohesion policy and the prevention of transnational crime concerns the improvement of living conditions and economic prospects in less developed or

marginalized regions. Through investment in infrastructure, education, training and other regional development initiatives, cohesion policy can contribute to economic growth and job creation in these areas, thereby reducing vulnerability to transnational criminal activities such as drug trafficking, smuggling, money laundering or trafficking in human beings.

Cohesion policy can also facilitate cooperation and exchange of information between Member States and local authorities in preventing and combating transnational crime. Through funding programs and cross-border projects, collaborative mechanisms can be developed between police forces, judicial institutions and other law enforcement agencies, thus contributing to more effective cross-border crime fighting efforts.

6. The role of cohesion policy in preventing and combating transnational crime. Cohesion policy plays a crucial role in preventing and combating transnational crime in several ways, which are essential for maintaining security and stability within the European Union.

6.1. Promoting cooperation between Member States. Cohesion policy facilitates collaboration and exchange of information between Member States on transnational criminal activities. Through EU-funded programs and projects, it creates a platform for cooperation between law enforcement agencies from different countries, enabling them to work together to combat cross-border crime. For example: EMPACT is an ad hoc management environment for developing activities to achieve pre-defined objectives [13, p.32]. EMPACT runs in four-year cycles. It is a multidisciplinary cooperation platform of Member States, supported by all EU institutions, bodies and agencies (such as: Europol, Frontex, Eurojust, CEPOL, OLAF, EU-LISA, EFCA and others). Third countries, international organizations and other public and private partners are also associated.

This cooperation is a key aspect of cohesion policy as it helps to strengthen solidarity and collaboration between Member States. A relevant case to be mentioned in this context is the implementation of emergency operational actions to combat serious and organized threats related to the war in Ukraine [14]. These actions are supported by cooperation between Member States and other stakeholders in a coordinated effort to ensure the security and safety of EU citizens. EMPACT activities thus contribute to promoting security and cohesion across the European Union. EMPACT takes a multidisciplinary approach in the fight against serious and organized crime, involving different national authorities, EU institutions and international partners. This approach reflects the complex nature of criminal challenges and the need for cooperation between different sectors and levels of government, which is essential for promoting cohesion in the EU. EMPACT [15] activities are therefore closely linked to EU cohesion policy, contributing to strengthening security and solidarity across the European Union through cooperation, exchange of information and coordinated operational actions against serious and organized crime.

6.2. Supporting implementation of and compliance with EU laws and regulations. Cohesion policy promotes compliance with and implementation of EU laws and regulations in the Member States, including those relating to the fight against transnational crime. Through conditionality and eligibility criteria for EU funds [16, p.213], Member States are encouraged to strengthen their law enforcement capacities and take effective action against transnational crime. These conditionalities may include requirements relating to the strengthening of administrative and institutional capacities in the field of law enforcement, the adoption and implementation of legislative and administrative measures against corruption and organized crime, and cross-border cooperation in the fight against transnational crime.

By way of example, we will present a number of EU legal acts setting out requirements and standards for strengthening law enforcement capacities, fighting corruption and organized crime, and promoting cross-border cooperation.

– Regulation (EU) No 514/2014 on the Internal Security Fund (ISF) [17] lays down specific conditions for the granting of EU funding for projects aimed at strengthening the administrative and institutional capacities of Member States' law enforcement authorities in the field of internal

security, including the fight against organized crime and corruption.

- Framework Decision 2008/841/JHA on combating corruption in the private sector [18] lays down minimum requirements for the definition and sanctioning of corruption in the private sector in the Member States and encourages cross-border cooperation between national authorities to combat this phenomenon.

- The EU Directives on the confiscation of assets acquired by crime and criminal activity (Directives 2001/500/JHA [19] and 2014/42/EU [20]) lay down minimum rules on the confiscation of criminal assets and their management, contributing to the fight against organized crime and the recovery of criminal assets.

- Framework Decision 2006/960/JHA on cooperation between law enforcement authorities of the Member States in the field of exchange of information [21] sets out requirements for the exchange of information between law enforcement authorities of the Member States, including in relation to combating transnational crime, such as trafficking in drugs or human beings.

These examples illustrate how EU legislation and directives set requirements and standards for strengthening law enforcement capacities, fighting corruption and organized crime and promoting cross-border cooperation in this respect.

6.3. Investing in economic and social development to reduce inequalities that can lead to crime. Cohesion policy supports investment in the economic and social development of less developed or marginalized regions, thus helping to reduce social inequalities and disparities that can create a breeding ground for criminal activity. By promoting social inclusion and creating equal opportunities for all EU citizens, Cohesion Policy can reduce the factors that lead to involvement in crime.

This policy, based on solidarity and cooperation between Member States, is underpinned by a range of European legislation aimed at tackling social and economic inequalities and providing support to disadvantaged communities. Here are some relevant examples of European legislation that support this objective and indirectly contribute to reducing the factors leading to involvement in crime:

– The European Social Fund (ESF) [22] is one of the EU's main financial instruments for promoting employment and combating social exclusion. It supports projects aimed at increasing access to education and training, integrating disadvantaged groups into the labor market and combating poverty and social exclusion. By investing in education, training and job creation, the ESF contributes to reducing the factors that can lead to involvement in crime, offering positive alternatives and future prospects for EU citizens.

– The Directive on equal treatment between persons irrespective of racial or ethnic origin (Directive 2000/43/EC) [23] prohibits discrimination on grounds of racial or ethnic origin in the areas of employment, education, social assistance and access to goods and services. By eliminating discrimination and promoting equal treatment, this Directive contributes to reducing social inequalities and creating a more inclusive and equitable environment, which can reduce the factors leading to criminal involvement in marginalized communities.

These European laws demonstrate the EU's commitment to promoting social inclusion and equal opportunities, which in turn can play a significant role in reducing the factors leading to involvement in crime. By investing in education, training, access to social services and combating discrimination, cohesion policy can help to build a fairer, more equitable and safer society for all its citizens.

6.4. Supporting national administrative capacity and judicial systems. Cohesion policy provides technical and financial assistance to improve administrative capacity and national judicial systems in the Member States. This investment encourages the strengthening of law enforcement and justice institutions, thereby facilitating the investigation and prosecution of transnational crime.

We will present some examples of EU legislation that demonstrate the EU's commitment to supporting the strengthening of national administrative capacity and judicial systems in Member States to effectively combat transnational crime:

– The Cohesion Fund Regulation (Regulation (EC) No 1303/2013 [24]) lays down the general principles and conditions for the use of the Cohesion Fund in the 2014-2020 and 2021-2027 programming periods. Through the Cohesion Fund, Member States receive funding for projects aimed at improving infrastructure and public services, including judicial systems and law enforcement institutions. The allocation of financial resources for these purposes contributes to modernizing and strengthening national administrative capacity and judicial systems, which facilitates the fight against transnational crime.

– The Anti-Money Laundering Directive (Directive (EU) 2015/849 [25]) lays down rules to prevent the use of the financial system for money laundering and terrorist financing. Through this Directive, Member States are obliged to strengthen their legal and institutional framework to combat money laundering, including by strengthening the capacity of law enforcement authorities and financial supervision systems. This creates a stronger environment for the investigation and prosecution of transnational financial crime.

By promoting cooperation between Member States, supporting the implementation of EU laws, investing in economic and social development and supporting national administrative capacity and judicial systems, cohesion policy helps to build a safer and more prosperous environment for all European citizens.

Conclusions. The European Union's cohesion policy is the most effective way of promoting balanced economic, social and territorial development in the Member States. Its main objectives are to reduce economic and social disparities between regions and to strengthen solidarity between Member States.

In this context, the simplification and streamlining of cohesion policy for the period 2021-2027 are crucial to ensure a faster and more efficient implementation of funds for regional and social development.

By simplifying administrative and regulatory procedures, the aim is to reduce administrative burdens for both managing authorities and beneficiaries. This simplification facilitates faster and more strategic programming of funds and helps to eliminate unnecessary bureaucracy that could slow down the implementation of projects.

In the context of European integration, preventing and combating transnational crime is a major priority. Economic integration and the free movement of goods and services between Member States facilitate not only trade and movement, but also the movement of criminals and illegal activities. Effectively combating transnational crime helps to build trust between Member States and strengthens cohesion within the EU.

By investing in economic and social development in less developed or marginalized regions, cohesion policy can reduce social and economic inequalities that can lead to criminal activities. Cohesion policy also facilitates cooperation and exchange of information between Member States in preventing and combating transnational crime.

In addition, by supporting national administrative capacity and judicial systems, cohesion policy can strengthen law enforcement and justice efforts in Member States. It facilitates the investigation and prosecution of transnational crime and contributes to the effective combating of transnational criminal activities.

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REPARATION OF THE DAMAGE CAUSED BY NEGLIGENT VIOLATION OF THE MEDICAL ASSISTANCE RULES AND METHODS

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"There is no fact which may not become a subject of dispute, and which the scientists would not have contradictory opinions about" – David Hume, English philosopher (1711-1776)

SUMMARY

The relevance of this study is determined by the increasing frequency in recent years of patient deaths and severe bodily harm due to the improper conduct of some medical workers concerning their duties, resulting from criminal negligence, an indifferent attitude towards the outcomes of their work and the fate of the patient.

There have even emerged doctors whose main objective is careerist tendencies and the desire to enrich themselves at the expense of unfortunate patients who have entrusted them with their health and lives. State control over the activities of curative and preventive institutions and the quality of medical services provided has diminished.

To establish cases of mass violation of patients' rights, extortion of money, and breaches of rules and methods of providing medical services, the competent authorities have adopted a series of laws and other normative acts aimed at protecting patients from prevailing illegality and ensuring strict compliance with the current legislation by all medical personnel.

Additionally, given that patients suffer both property and moral damages, we aim to elucidate effective mechanisms for their repair.

Keywords: damage, methods of providing medical assistance, medical negligence, liability, malpractice.

Introduction. *General considerations regarding regulations applicable to damages caused by negligent violation of rules and methods of providing medical assistance.*

In medical practice, it is imperative to know legal norms, as their observance ensures the protection of the physician in performing their professional activities, especially in the current context where patients are increasingly insistent on the respect of their rights.

The formalization of all rights and obligations of medical personnel, as well as the responsibility they bear for negligent and defective activity, has been known for millennia and emerged with the formation of states [15, p.96].

The issue of medical malpractice has its origins in ancient times, and with it, the responsibility of the physician has adapted to the social system of the era. Various societies have approached and resolved this issue in different ways, often exceeding the moral limits of the time.

The interference of physicians with justice has deep roots, being attested since the earli-

est times of antiquity. One of the oldest pieces of evidence in this regard is found in the Code of Hammurabi, a collection of laws from the reign of the Babylonian King Hammurabi (1728-1686 BC). This code contains provisions related to medical liability, including sanctions for potential mistakes in medical practice.

Similar regulations to those in the Code of Hammurabi existed in other ancient cultures, such as Ancient Greece, the Roman Empire, Egypt, and China. In the Romanian space, in the Principality of Moldavia, regulations regarding medical activity and responsibility first appeared in Vasile Lupu's Code, published in Iasi in 1646. These regulations represented an important step in establishing medical norms and responsibilities in that period [2, p.96].

This compendium, known as the Romanian Book of Learning (from imperial rules and other counties), marked the transition of Moldavia from unwritten (oral – "custom of the land") to written law and provided certain sanctions against physicians who did not honor their professional obligations or, especially, participated in criminal actions [6, p.37-38].

Scientific research related to damages caused by negligent violation of rules and methods of providing medical assistance. Practically, in present, all countries in the world, including the Republic of Moldova, have normative acts regulating the activities and responsibilities of medical personnel. These normative acts are designed to ensure high standards in the provision of medical care and for protection both patients and medical staff. They establish rules and procedures regarding the quality of medical services, professional ethics, medical responsibility, and other relevant aspects of the healthcare system.

To classify an act under criminal norms [13], the specialized literature provides a set of legal conditions for holding individuals, including medical personnel, accountable, as follows:

Illicit conduct: The unlawful act;

Damage: The resulting harm;

Causal link: The connection between the illicit conduct and the resulting harm;

Guilt: The culpability of the subject of the illicit act;

Absence of exonerating circumstances: The non-existence of factors or circumstances that would eliminate legal responsibility.

According to author I.G. Vermeli [18. p.112], the criminal liability of medical personnel for negligent assistance may arise based on the concurrence of certain grounds:

1. The actions of the medical personnel were incorrect and contradicted the recognized principles of providing medical assistance;

2. Considering the professional training obtained and the position held, the medical personnel should have been aware that their actions were wrong and could cause harm to the patient's health;

3. The incorrect actions led to adverse consequences.

Comparatively, Romania's Health Reform Law establishes the civil liability of medical personnel for damages caused in the exercise of their profession, known as liability for malpractice [1, p.67].

Malpractice is defined by this law as "…the professional error committed in the exercise of the medical or medico-pharmaceutical act, generating damages to the patient, involving the civil liability of the medical personnel and the provider of medical, sanitary, and pharmaceutical products and services".

Liability for malpractice does not eliminate the possibility of criminal liability, if the act causing the damage constitutes a crime according to the law.

The penal legislation [8, Art.213] provides liability for the negligent violation of rules or methods of providing medical assistance by a doctor or another medical worker, which arises only in cases of severe bodily harm or health impairment or death of the patient.

Criminal liability can affect both the doctor who committed the alleged crime and any other

member of the medical personnel involved in providing medical assistance in that case. It is important that all those involved in the medical process be aware of their responsibilities and act in accordance with existing laws and ethical norms to ensure a safe and ethical environment for patients.

Responsibility also arises from the provisions of the Health Protection Law [12, Art.14], which states that "…medical and pharmaceutical workers are responsible for professional incompetence and violation of professional obligations, in accordance with the current legislation". In this regard, the violation of professional obligations by persons providing medical assistance is discussed in the legal literature [3, p.804] as a violation of the rules or methods of providing medical assistance and manifests in the following forms:

1. Insufficient examination of patients and failure to perform special diagnostic exams;
2. Careless supervision and care of children;
3. Delayed or unrealized hospitalization or premature discharge of patients from the hospital;
4. Insufficient preparation and poor execution of surgical operations or other curative measures;
5. Incorrect administration of medication, etc.

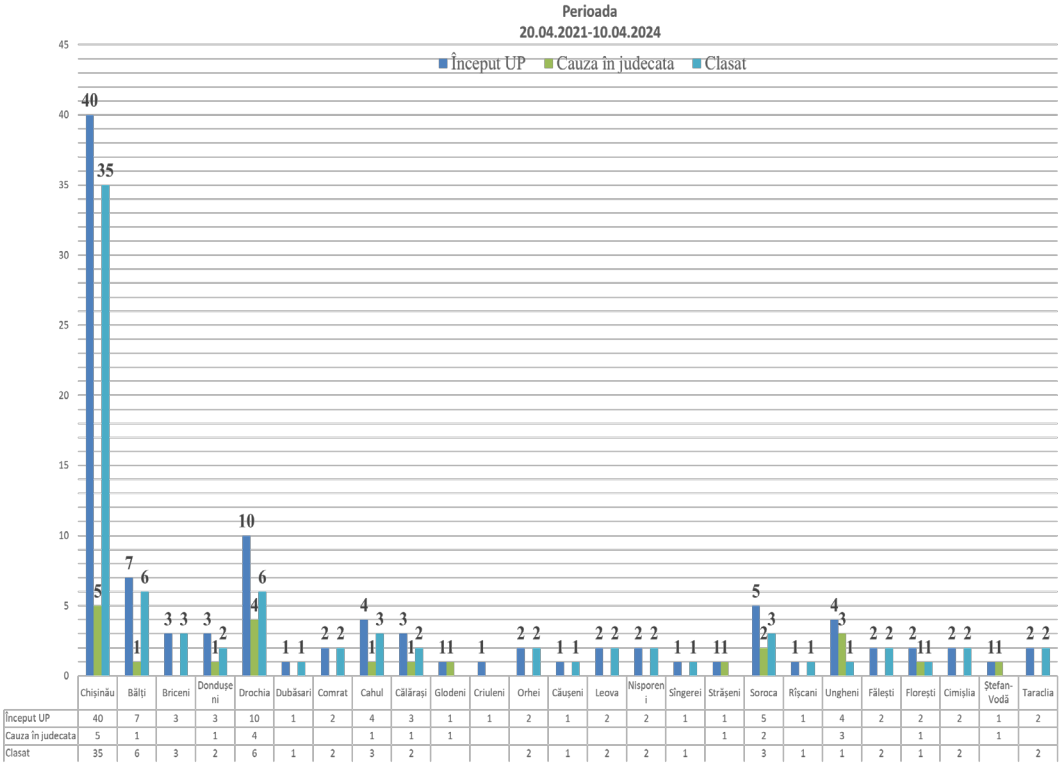
In the context of the above, it can be deduced that in the case of incorrect or negligent treatment applied by a doctor to a patient, damages of any nature may be caused, affecting physical and psychological capacity as appropriate.

Accordingly, the injured patient, or their relatives or successors, can claim material compensation using legal instruments such as a civil action in a criminal trial [14, p.87], or by choosing the civil procedural route to repair or recover damages caused by the negligent violation of rules and methods of providing medical assistance [17, p.67].

Analysis of judicial practice regarding damages caused by negligent violation of rules and methods of providing medical assistance. To substantiate the proper reparation of the caused damage, the delicate issue lies in establishing the causality relationship as a consequence of the illicit act. According to doctrine and judicial practice, the causality relationship encompasses both the facts that constitute the necessary and direct cause and the facts that made the causal action possible or ensured or aggravated its harmful effects.

Determining the causality relationship between the illicit medical act and the damage requires establishing, on a scientific basis, all correlations between facts and circumstances, retaining in the causal field only those that have a direct or indirect, mediated or unmediated contribution to producing the damage and that make it possible to identify the main, secondary, internal, external, concomitant (congruent or associated) causes and the conditions that mediated the action of the causes.

Unfortunately, a pessimistic statistical picture emerges regarding the examination of materials recorded by the prosecution bodies. The period from April 20, 2021, to April 10, 2024, was analyzed, during which criminal investigations were initiated in about 103 cases, of which 91 were dismissed due to the lack of elements of the offense, and only 22 were sent to court (Table No.1).



	Chișinău	Bălți	Briceni	Dondușeni	Drochia	Dubăsari	Comrat	Cahul	Călărași	Glodeni	Criuleni	Orhei	Căușeni	Leova	Nisporeni	Sîngerei	Strășeni	Soroca	Rîșcani	Ungheni	Fălești	Florești	Cimișlia	Ștefan-Vodă	Taraclia
Început UP	40	7	3	3	10	1	2	4	3	1	1	2	1	2	2	1	1	5	1	4	2	2	2	1	2
Cauza în judecata	5	1		1	4			1	1	1							1	2		3		1		1	
Clasat	35	6	3	2	6	1	2	3	2			2	1	2	2	1		3	1	1	2	1	2		2

Table 1: *Infographic on the initiation of criminal proceedings for cases of negligent violation of medical assistance rules and methods*

From the Contents of Table No. 2, we can deduce: only 22 cases were sent to court, with the distribution as follows: Chișinău: 5 cases; Drochia: 4 cases; Ungheni: 3 cases. In other localities, during this period, practically only one case was sent to court in each.

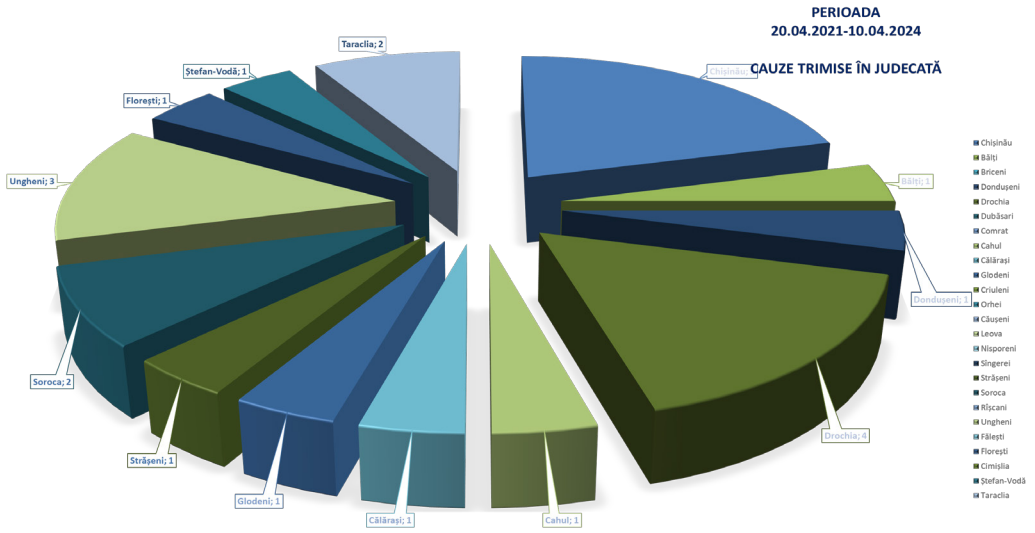


Table 2: *Infographic on cases sent to court for negligent violation of medical assistance rules and methods*

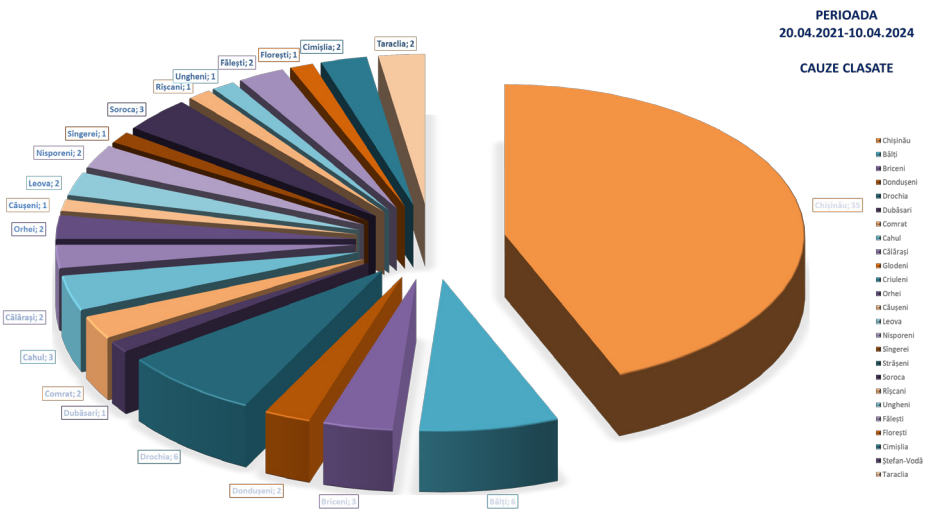


Table 3*: Infographic on cases classified for negligent violation of medical assistance rules and methods*

From the information presented above, the *case of Scripnic v. Republic of Moldova* [4], serves as an example. In this case, the European Court of Human Rights found both material and procedural violations and obliged the defendant – State – to pay compensation to the claimants, amounting to 15,000 EUR.

Essentially, the factual situation, as presented by the claimants, can be summarized as follows: "...On June 3, 2003, the second claimant was admitted to Municipal Clinical Hospital No. 2 to give birth to their second child. A group of doctors examined her and concluded that she had a proportionally flat and narrow pelvis, a condition that made natural childbirth dangerous. However, Dr. L. proceeded with the birth without performing a cesarean section. A medical report drawn up on the same day noted that the claimants' newborn had bleeding in the skull, brain tissue, and around the right rib; the bleeding occurred during childbirth as a result of medical manipulations. On June 5, 2003, the claimants' child died due to cranial trauma sustained during birth".

At an unspecified date in 2003, the claimants filed a criminal complaint against Dr. L. Criminal proceedings were initiated on December 25, 2006, but were terminated on October 2, 2009, due to the expiration of the statutory limitations.

On May 25, 2010, the claimants filed a civil action against Dr. L. and Municipal Clinical Hospital No. 2 seeking compensation for material damage in the amount of 11,550 Moldovan lei (MDL) (equivalent to 730 euros (EUR)), moral damage in the amount of 2,000,000 lei (equivalent to 126,450 euros), and legal expenses totaling 7,000 MDL (equivalent to 443 EUR). They relied on the provisions of the Civil Code regarding delictual liability and Law No. 411 regarding the hospital liability.

On November 27, 2011, the Riscani District Court partially upheld the claimants' claims and awarded them 60,000 MDL (3,800 EUR) for moral damages and 7,000 MDL (443 EUR) for costs and expenses. The court concluded that Dr. L. was in tortious liability since he acknowledged his guilt during the interrupted criminal proceedings on October 2, 2009, and this circumstance excluded the hospital's vicarious liability. The court found the claim for moral damages excessive in light of the economic situation and average salary in Moldova.

The claimants appealed, arguing that the compensation awarded was insufficient and that the hospital was illegally exempted from vicarious liability for its employee's negligent acts.

On April 26, 2012, the Chisinau Court of Appeal awarded them an additional sum of 11,500 MDL (724 EUR) for material damage. The reasons given by the Chisinau Court of Appeal were incorporated by reference into the court decision. The court did not address the claimants' asser-

tion that the hospital was indirectly responsible.

The claimants further appealed and reiterated their claims before the Appellate Court. On March 20, 2013, the Supreme Court of Justice dismissed their appeal as unfounded. That decision was final.

With reference to the relevant national legislation and practice of Moldova, the following can be stated:

The Law on Health Protection No. 411 of March 28, 1995 [12, art.19], establishes the following:

"Article 19. Right to compensation for harm to health

(...)

Letter (3). Patients (...) have the right to compensation for harm caused to patients by medical institutions through (...) improper treatment that aggravates the health condition, causes permanent disability, endangers the patient's life, or results in death".

The relevant provisions of the Civil Code [7, Art.1398/1998] of June 6, 2002, in force at the time of the events, state:

"Article 1398 (1998). Basis and general conditions of tort liability

Letter (1). Anyone who acts unlawfully, with guilt, is obliged to compensate for pecuniary damage, and in cases provided by law, also for moral damage caused by action or omission.

(...)

Article 1403. Principal's liability for agent's act

Letter (1). The principal is liable for damage caused with guilt by his agent in the functions entrusted to him".

The relevant provisions of the Civil Procedure Code of Moldova establish the following:

"Article 130.

1. The court assesses evidence according to its inner conviction, based on a multi-aspect, complete, impartial, and direct examination of all evidence in the file in their entirety and interconnection, (...).

2. No evidence has a pre-established probative force for the court (…)".

In the *case of Spînu v. Rentel SRL* [5] (No. 2ra-923/13), definitively decided by the Supreme Court of Justice on March 20, 2013, the national courts awarded the claimants moral damages in the amount of 490,000 MDL (30,690 EUR, according to the exchange rate in force on the date of the final decision) for the death of a relative, which involved the tort liability of the defendant company (the victim's fall into an unfenced and unmarked ditch dug by the respective company). The Prosecutor's Office, seized in this case, issued a decision to dismiss the case because the elements of a criminal offense were lacking.

Essentially, the claimants complained, under Article 2 of the Convention, that they did not receive redress, particularly, that they did not receive adequate compensation for the damage caused.

Furthermore, the claimants also complained, under Article 6 of the Convention, that the courts did not provide sufficient and adequate reasons for rejecting their assertion that the hospital was indirectly responsible.

In this regard, the position of the European Court is well-founded and through the prism of the fact that: "…Even if the claimants had not initiated and properly followed the criminal procedure against the hospital, the Court is not convinced that, as the Government claims, establishing the hospital's criminal liability was a prerequisite for engaging its tort liability. Firstly, this does not explicitly result from the relevant provisions of the Civil Code, and the Government does not provide any examples of national case law to support its claims. Moreover, it observes that, according to the legislation of the Republic of Moldova, civil courts have the possibility to independently evaluate all evidence and form their own conviction, and they are not formally bound by any findings of criminal investigation bodies. In this respect, the Court refers to the circumstances of the case *Ciorap v. Republic of Moldova* (No. 4) (No. 14092/06, §§ 28, 34-38 and 57-58, 8 July 2014), in which civil courts compelled a hospital to compensate for damage caused

by medical negligence, in the absence of the establishment of a criminal offense by that hospital. Also, from the national case law (the case *Spînu v. Rentel SRL* (No. 2ra-923/13)), it results that civil courts did not take into account any potential criminal liability of the defendant company in establishing its tort liability" [4, p.36].

Conclusions. The use of appropriate protocol treatment standards, continuous medical education, advanced knowledge of health legislation, proper preparation of medical documentation, respect for patient rights, including adequate information and obtaining informed consent, as well as improving communication with the patient are fundamental mechanisms for significantly reducing cases of malpractice and accusations against medical personnel in the Republic of Moldova.

It remains for case law and specific legal institutions to precisely individualize medical liability and to achieve the principle of *nulla poena* sine culpa *(latin for „no punishment without guilt")* [11], to delineate failure from error and mistake, to enable the precise knowledge of medical facts and their interpretation in a legal context, „at the intersection of scientific truth, the relationship between the incriminated fact and the requirements of the legal norm" [16, p.88-90].

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CONSERVATION OF THE HUMAN FACTOR IN DECISION-MAKING IN CRIMINAL PROCEEDINGS AS A STANDARD OF DIGITALIZATION IN JUSTICE

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Summary

The article is devoted to the study of the most pressing issue in the light of the growing role of artificial intelligence (AI) technologies in society – will AI be able to become an independent decision-making tool in criminal proceeding? The author formulated and substantiated the position requirement of the inadmissibility of delegation of the process of making criminal procedural decisions to AI technologies must be the one of standards of digitalization of justice.

The main indicated arguments, in particular, are: the objective confirmation of such unacceptable risks of AI as: firstly, the risk of using false information, and therefore, in general, distorting its functional purpose as an operative assistant to law enforcement (the phenomenon of "hallucinations"), secondly, the risk of generating biased data and the associated risk of discrimination; the fundamental role of the cognitive abilities and competence of the person making the procedural decision in ensuring justice in criminal proceeding; predictable negative impact of excessive reliance of law enforcement officers on digital technologies on their professional qualities.

It is emphasized that the message regarding the inadmissibility of delegating judicial decision-making to AI technologies permeates the latest Opinion No. 26 (2023) of Consultative Council of European Judges (CCEJ) – "Moving forward: the use of assistive technology in the judiciary", in which the European institution unequivocally emphasized that despite the unconditional usefulness of advanced technologies in promoting the efficiency of judicial activity, the process of making a judicial decision cannot be delegated by it. Through the prism of the totality of AI risks, it is argued that a separate standard for determining the limits of digitalization in criminal proceeding is the prohibition of non-transparency in the use of AI technologies.

Keywords: criminal proceeding, artificial intelligence, risk, procedural decision, digitalization, human rights, justice.

Introduction. Artificial intelligence (Hereinafter – AI) and its use in the field of justice is actively discussed by the legal community both in Ukraine and in the world. The European Commission for the Efficiency of Justice of the Council of Europe in the European Charter for the Ethical Use of AI in Judicial Systems and the Related Environment, adopted at the 31st Plenary Meeting in Strasbourg on December 3-4, 2018 [1], marked high expectations for the role of AI as a potential tool of effective and high-quality justice.

In the international document "Council Conclusions: Access to justice: seizing the opportunities of digitalisation." (Hereinafter – Council Conclusions) [2] emphasized the obvious potential of using AI tools to improve the functioning of justice systems (accelerating the proceedings, promoting the consistency of judicial practice, the quality of court decisions) and the prospects of AI in the future for performing, in particular, tasks, such as analysis, structuring and preparation of information on the subject of cases, automatic transcription of records of oral hearings, machine translation, support for analysis and evaluation of legal documents and decisions of courts/ tri-

bunals, automatic anonymization of judicial practice and provision of information through legal catboat's, etc. [2, pnt. 38].

According to the European Commission, of particular interest in the field of justice are the anonymization of Court decisions (anonymization is a data processing method in which identifying information is removed or changed), transcription of Court records, machine translation, chatbots supporting access to justice, and automation robot processes (pnt. 3.3. of the EU program document "Digitalisation of justice in the European Union: A toolbox of opportunities" European Commission" (Hereinafter – Toolbox) [3].

As modern researchers note, there is global experience in the use of AI for making procedural decisions in criminal proceedings [4, p.118]. In particular, the artificial intelligence is used when making a decision to register a statement or report of a criminal offense in Spain. Thus, scientists from the University of Madrid named after Charles III and Cardiff University in Wales have developed artificial intelligence – the VeriPol algorithm, which is capable of detecting false reports to the police based on the analysis of their content. This technology was tested by the Spanish Police in 2017: in particular, investigators checked the conclusions of AI in personal meetings with applicants – interestingly, in 83% of cases, the applicant's version was not confirmed, which resulted in the closure of the proceedings [5].

The US, being one of the leading users of AI in justice, uses such technologies when choosing a preventive measure. For example, researchers from Stanford University (Stanford Computational Policy Lab) have developed an algorithm that assists the judge when choosing a defendant: custody or bail. After reviewing about 100,000 procedural documents related to the selection of preventive measures, the developers found that some judges allow citizens to be released on bail in 90% of cases, while others – only in 50% of cases. The program makes it possible to fairly assess the risks and choose to detain a much smaller number of people [6].

Expectations from AI systems, which should be organically incorporated into the electronic criminal proceedings (ECP) system, are justified. So, in particular, according to T. Pavlova "... electronic intelligence, which is the basis of the ECP, will significantly simplify the qualification process, which is connected with the selection of the necessary composition of a criminal offense, which contains all the signs of a committed criminal offense". As the author notes, "a smart system" will help to find out what criminal offense was committed, electronic intelligence can develop the necessary and step-by-step investigation plan, proposing the necessary norm(s), according to which the committed criminal offense should be qualified" [7].

Also in her opinion, with which we agree, "... electronic intelligence is able to control the timing of the necessary investigative actions, for example, the timing of the search or seizure of property, thus the violation of the norms of the CPC of Ukraine and illegal pressure on the participants of the process are excluded. In the event of the application of a preventive measure in the form of detention, the suspect/ accused will be in custody for as long as is provided for in the CPC of Ukraine, the program notifies about the expiration of such terms, which will exclude the delay of the investigation [7].

The indicated and other directions are certainly too promising and should be mastered in the process of the justice digitalization. However, they are only aids to the criminal justice bodies' officers and in certain cases directly help to the rights of the participants of the process. At the same time, if AI technology will be able to become an independent decision-making tool in criminal proceedings?

One of the popular arguments of supporters of AI technologies is its objectivity, due to the fact that "AI intelligence is deprived of expressing its own points of view, but acts exclusively according to the algorithm, that's why, the violation of the rights and legitimate interests of the participants in criminal proceedings with the use of artificial intelligence is minimized" [4. p.119], and so it seems to make the corruption component impossible.

However, as the world experience of using the popular ChatGPT in justice for its convenience to search for relevant court decisions, shows at least 2 risks associated with its lack of transparency (like any other AI system): first, it is the risk of using false information, and therefore, in general, the distortion of its functional purpose as an operational assistant to law enforcement (in particular, the phenomenon of "hallucination" – the answer of a Chatbot that seems believable, but is actually incorrect. Secondly – the risk of generating biased data is related to this risk of discrimination.

It should be noted that in the general mechanism of a fair decision in the criminal proceedings, a prominent place is given to the use of the unique cognitive abilities and competence of the decision making person. T. Kameneva's opinion that "it is the human ability to combine legal awareness with cognitive and emotional competences allows finding the optimal solution in a situation where moral norms cannot be ignored and justice and legality come into conflict. Purely intuitive intentions regarding the study of additional evidence, decision-making on the need to reclassify the crime, insisting on the accusation or refusing it, etc. follow from this" [8, p. 21].

A court decision, at least in criminal proceedings, cannot be the result of a mechanical application of the law, its content is "the quintessence of information and knowledge formally reflected in it and developed on the basis of specific practical skills, and their basis is the norms of criminal procedural legislation. In the researched aspect, the criminal procedural legislation establishes the limits of the application of the hermeneutics of court decisions in criminal proceedings [9, p. 38-39].

Of course, the human factor often causes differences in judicial practice. However, although "…individual judges may interpret the law differently, they do so publicly and their decisions may be challenged". This should reduce the degree of variation in judicial review over time – at least in theory. But if the program is too strict or too flexible in the context of choosing and applying the law, it can be very difficult to detect and correct. Individual judges may have different interpretations of the law, but they do so in public and are subject to being overturned on appeal. This should reduce the amount of variation in judgments over time – at least in theory. But if a programmer is too strict or too lenient in their implementation of a rule, that may be very difficult to discover and correct [10].

In other words, the decision-making technology in such a field as criminal proceedings cannot be devoid of the human factor. The message regarding the inadmissibility of delegating judicial decision-making to AI technologies permeates the latest Opinion No. 26 (2023) of Consultative Council of European Judges (CCEJ) – "Moving forward the use of assistive technology in the judiciary" – in which the European institution unequivocally emphasized that despite the unconditional usefulness of advanced technologies in promoting the efficiency of judicial activity, the process of making a judicial decision cannot be delegated by it.

The CCEJ, highlighting the challenges of AI for the independence of the judiciary, the impartiality of the court and fair trial, pointed out, in particular, that the use of technology must, above all, respect the nature of the judicial process. First, many judicial decisions are discretionary decisions, which are based on the particular facts of an individual case. Secondly, judges play an essential role in the development of the law. They do not merely apply fixed and immutable rules. Judges must be able to correct or add to the law if it falls short or threatens to derail the law's application in specific cases. Technology must not step into the realm of justice. Technology must not discourage or impede the critical thinking of judges as this can lead to stagnation of legal development and an erosion of the system of legal protection. Technological tools must therefore respect the process of judicial decision-making and the autonomy of judges. [2, pnt. 90].

CCEJ also warned about predictable negative impact of excessive reliance of law enforcement officers on digital technologies on their professional qualities. Judicial decision making is a highly skilled activity. It requires significant training and experience. Use of data tools as a replacement for judicial legal research and of supportive AI to help judges reach decisions may un-

dermine an individual judge's ability to research and take decisions. Use of predictive coding may, for instance, undermine a judge's ability to determine what is and what it's not relevant evidence and may adversely affect their ability to assess the strength of evidence. While such tools are intended to assist judicial decision-making, they may over time reduce judicial skill and experience. The ability to determine and evaluate the strength of the evidence due to the dependence on technical assistance, is not always accompanied by the reliability and objectivity of the results (pnt. 60). One possible consequence of judges no longer being able to identify and assess the strength of evidence is that they could become dependent upon technological assistance. Were their skills and experience in evidence-taking and identification, and similar areas, to be denuded by reliance on technology such as predicative coding, individual independence, and judicial autonomy, may be reduced. What is intended to be supportive may thus become the de facto decision. This may particularly be problematic where such assistance provides individual judges with an assessment of decisional norms based on general trends amongst the judiciary, a problem that would then become self-reinforcing as more judges follow the trend identified by data tools. More broadly, this poses a threat to institutional independence as it would, in effect, place the decision-making process in the hands of those who design the data tools [2, pnt. 61].

As accurately stated in this sense in point 6 of Opinion No.14 (2011) of the Consultative Council of European Judges, if the judiciary will be perceived by users as a purely technical process without its real and fundamental function, the administration of justice may become fully automated without human intervention factor. Justice, first of all, should contain the human factor, since it deals with real people and the resolution of their disputes. The human factor is of the greatest importance in assessing the behavior of the parties and their witnesses in the court hearing, which is a component of the judge's work. Therefore, "The role of IT should be limited and manifested in the substitution and simplification of procedural actions that lead to the making individual decision. However, IT cannot replace the function of a judge in hearing and weighing factual evidence in a case, in determining the relevant legislation and making a decision without any restrictions other than those specified in the law (point 31). A judicial decision must always be made by a person and cannot be delegated to an artificial intelligence tool (pnt. 39 of the Council Conclusions).

One of the main potential "disadvantages" of the use of AI in judicial proceedings in the context of ensuring a fair criminal procedure, is the accompanying effect of lack of transparency or the "black box" effect, which "impedes proper and necessary accountability and makes impossible to verify how the result was achieved and whether it meets the requirements of relevant regulatory acts. This lack of transparency can undermine the ability to effectively decisions appeal based on such results and, thus, may violate the right to a fair trial and an effective remedy, as well as limit the areas in which these systems can be used legally" (pnt. 41 of the Council Conclusions). This necessitates the prohibition of automation, which will make the process of making judicial decisions lack of transparency, appropriate levels of transparency, comprehensibility, verifiability, reliability, accuracy, security, accountability, as well as requirements to prevent discriminatory effects" [2, pnt. 43].

The use of artificial intelligence in the justice sector may also carry the risk of perpetuating and possibly reinforcing existing discrimination, including stereotypes, prejudice or structural inequality, as well as allowing distorted or opaque decision-making, and thus may lead to violations of fundamental rights such as human dignity, the right to freedom, non-discrimination, privacy and data protection and the right to a fair trial [2, pnt. 40].

Note that the final version of the Artificial Intelligence Act (AI Act), unanimously approved by the members of the European Union on February 2, 2024, prohibits the use of hidden technologies and programs that use artificial intelligence for subconscious manipulation or abuse of people's weaknesses, which could lead to physical or psychological harm, the indiscriminate use

of real-time biometric identification in public places to enforce law and order, or the use of "social scores" by authorities to limit the rights of individuals or groups.

The law completely prohibits mentioned above. So AI systems will be required to provide information about how they work and make decisions, especially in the area of justice. From the above said it is followed the expediency of separate the prohibition of non-transparency in the use of AI technologies as standard for determining the limits of digitalization in criminal proceeding.

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ASPECTS REGARDING THE RESUMPTION OF THE CRIMINAL INVESTIGATION AFTER ITS TERMINATION, AFTER REMOVING THE PERSON UNDER INVESTIGATION AND/OR AFTER THE CRIMINAL CASE HAS BEEN CLOSED

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Summary

The termination of the criminal prosecution sometimes has a relative character, being possible that in certain cases provided by law, namely Art. 287 Criminal Procedure Code of the Republic of Moldova, the criminal prosecution can be resumed.

The resumption of the criminal prosecution after its termination, after the removal of the person under investigation and/or after the criminal case has been closed, is ordered by ordinance by the superior hierarchical prosecutor.

The criminal prosecution can also be resumed by the investigating judge, in case of admission of the complaint filed against the order to cease prosecution, to remove the person under investigation and/or to close the criminal case, as well as the complaint filed against the order to maintain of the disputed one in the order of higher hierarchical control.

Unfounded resumption of criminal prosecution, in the absence of new or recently discovered facts, violates the person's right not to be subject to criminal prosecution twice for one and the same act.

Keywords: criminal prosecution, resumption of the criminal prosecution, conditions of resumption, ways of resumption, new and/or recently discovered facts, fundamental vice, investigating judge.

Introduction. Ensuring accessible and functional justice is one of the priority objectives of judicial reform. The state has the primary role in resolving social conflicts. On the other hand, an imminent danger for the current justice system, political rights, labour rights, citizen's constitutional rights, public confidence and other areas is posed by ill-intentioned statements, which have various legal consequences, which are necessary to resolve certain social relations [16, p.284].

The resumption of the criminal investigation is the criminal procedural institution with the help of which the conduct of the criminal process is ensured by reactivating the course of the criminal investigation, in the cases provided by law [1, p.866].

The resumption of the criminal investigation is the procedural institution with an exceptional character, which can be ordered taking into consideration the fact that no one can be prosecuted, tried or punished more than once for the same act. Functionally, the resumption of the criminal investigation contributes to the elimination of situations in which the course of the criminal investigation has been stopped or in which the results of the investigation are imperfect. The proper purpose of resuming the criminal investigation is to ensure an efficient conduct of the

criminal process in order to achieve criminal justice, which in fact, is summed up in the finality of the criminal process by achieving its goals [2, p.95].

Discussions and results obtained. The author *Osoianu Tudor* noted that, in para. (2) Art.1 of the Code of Criminal Procedure of the Republic of Moldova, the purpose of the criminal process is presented in the singular, although we can identify its bifurcation in two related directions, towards which the process is oriented: protecting the person, the society and the state from crimes; protecting the person and the society from the illegal acts of persons in positions of responsibility in their activity related to the investigation of alleged or committed crimes. These goals are subordinated to the achievement of two other purposes or objectives:

– any person who has committed a crime should be punished according to his guilt;

– no innocent person should be held criminally liable and convicted.

From their content, the final objectives may not be achieved if the criminal investigation bodies and the courts will admit illegalities in the process of investigating crimes and solving criminal cases. E.g.: in case of issuing an illegal order to terminate the criminal investigation, the victim is prejudiced doubly – initially for the criminal act that prejudiced him; the second time – as a consequence of the arbitrary actions of a state body with special powers in the criminal process [3, p.440].

The conditions and methods for resuming the criminal prosecution after its termination, after the criminal case has been closed or after the person under investigation has been removed are provided by the criminal procedural norm – Art.287 of the Criminal Procedure Code of the Republic of Moldova.

The author *Dolea Igor* notes that the resumption of the criminal prosecution after the termination of the criminal prosecution, after the removal of the person under investigation and/or after the closure of the case takes place in two ways.

The first method consists in the resumption of the criminal prosecution by the superior hierarchical prosecutor, in the event that he finds that new or recently discovered facts have appeared, or a fundamental flaw has affected the previous decision regarding the termination of the criminal prosecution, the classification of the criminal case, or the removal of the person from prosecution.

The second method of resumption is determined by the issuance of a decision of the investigating judge regarding the cancellation of the order to terminate the criminal investigation, to close the criminal case or to remove the person from criminal investigation, according to Art.313 of the Criminal Procedure Code of the Republic Moldova [4, p.817].

In this vein, we will examine the ways presented above.

The Constitutional Court of the Republic of Moldova in Decision No. 12 of 14.05.2015, regarding the exception of unconstitutionality of Art. 287 para. (1) Criminal Procedure Code of the Republic of Moldova [5; 6, p.395] mentioned that *"new facts"* constitute data about the circumstances of which the criminal investigation body was not aware at the time of the adoption of the contested ordinance and which could not have been known at that time, and *"recently discovered facts"* are those ones that existed at the date of the adoption of the contested ordinance, but could not be discovered.

In the same decision of the Constitutional Court it is stated that: "According to the Explanatory Report to Protocol No. 7, the term *"new or newly discovered facts"* includes new evidence of pre-existing facts. Moreover, Article 4 of Protocol No. 7 does not prevent the re-opening of the procedure in favor of the convicted person and any other modification of the court decision for his benefit" [5].

New facts constitute data about the circumstances of which the criminal investigation body was not aware at the time of the adoption of the contested ordinance and which could not have been known at that time. New must be the evidence administered in the investigation of other cases, and

not the means of evidence through which evidence already known in the respective case is administered. *Newly discovered facts* are the facts that existed at the date of adoption of the contested ordinance, but could not be discovered. The attitude of a party who, knowing a fact or a circumstance that was favorable to him, preferred to remain silent cannot justify the mention of a judicial error and cannot constitute an obstacle to the admission of the resumption of the criminal prosecution if by other means of evidence such circumstances could not be discovered at that time [4, p.895].

According to the provisions of Art. 4 para. 2 of Protocol No. 4, the *non bis in idem* principle does not apply in matters of review of a court decision, the first procedure was reopened because "new facts" were discovered or it was proven that the first trial was affected by "a fundamental flaw in the procedure"; both situations must have been likely to affect the solution pronounced within it. The explanatory report to Protocol No. 7 specifies: "that the expression *new or newly discovered facts* has in mind "all means of proof regarding pre-existing facts" and that the text does not exclude the reopening of the procedure or any other modification of the decision in favor of the convicted [7, p.1861].

The Criminal Procedure Code of the Republic of Moldova in Art. 6 para. (44) explains the term *"fundamental vice"* as an essential violation of the rights and freedoms guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms, by other international treaties, by the Constitution of the Republic of Moldova and other national laws [8].

Also, in the case of the discovery of a fundamental flaw in the previous procedure, the criminal prosecution can be resumed no later than one year after the entry into force of the order terminating the criminal investigation, closing the case or removing the person from criminal investigation [5].

The nature of the fundamental defect shall be indicated in the annulment of the order terminating the criminal prosecution, ranking or removing it from the criminal prosecution, with the mention of the circumstances of the case [4, p.817].

The author *Ostavciuc Dinu* notes that the notion of fundamental vice in the sense of Art. 4§2 of Protocol No. 7 tends to indicate that only a serious violation of a rule of procedure, which considerably undermines the integrity of the previous procedure, can serve as a basis for reopening it to the detriment of the accused when the latter has been acquitted by an offense less serious than that provided by the applicable law. Therefore, in such cases, the simple re-evaluation of the case material by the prosecutor or the higher court cannot meet this criterion [10, p.541].

However, regarding the situations in which an accused was found guilty and in which the reopening of the procedure could benefit him, the Court recalls that point 31 of the explanatory report to Protocol No. 7 emphasizes the fact that this article does not exclude a reopening of the procedure in favor of the convicted person or any other modification of the judgment in favor of the convicted person. In such a situation, the nature of the vice must therefore be primarily assessed on the basis that there has been a violation of the right to defense and therefore an obstruction to the proper administration of justice. In all cases, the reasons justifying the reopening of the procedure must, according to the wording of Art. 4§2 in fine of Protocol No. 7, be of a nature to affect the decision rendered, either in favor or to the detriment of the person in question [10, p.541].

According to paragraph (4) Art. 287 of the Code of Criminal Procedure of the Republic of Moldova, the resumption of the criminal prosecution can only take place within the limitation period for bringing criminal liability for the said act, except when it is necessary for the rehabilitation of the person [8].

It should be noted that the criminal prosecution according to the provisions of paragraph (2) Art. 287 of the Code of Criminal Procedure of the Republic of Moldova, it can also be resumed by the *investigating judge* in the case of admission, or according to Art. 313 of the Code of Criminal Procedure of the Republic of Moldova – of the complaint against the order to terminate the criminal prosecution, to remove the person under investigation and/or classifying the case and the

complaint against the ordinance to maintain the contested one in the order of higher hierarchical control [8].

According to the provisions of Art. 313 para. (6) of the Criminal Procedure Code of the Republic of Moldova, the conclusion of the investigating judge is irrevocable, with the exception of the conclusions regarding the refusal to start the criminal investigation, the removal of the person from the criminal investigation, the termination of the criminal investigation, the classification of the criminal case and the resumption of the criminal investigation, which can be appealed within 15 days from the date of communication and will be judged according to Art. 447 and 448, in the absence of the parties [9].

In the opinion of the author *Cristinel Ghigheci*, the principle of *ne bis in idem* experienced some retrogression under the rule of the Romanian Code of Criminal Procedure from 1968, because this code provided for the power of the prosecutor to end the criminal investigation with the possibility of reopening it at any time, until the limitation of criminal liability intervenes. Considering that the prosecutor did not have to invoke the existence of new facts or circumstances, in order to reopen the criminal investigation, the solution in the old Code was likely to generate an insecurity of the legal situation of the person under criminal investigation, inadequate in a state of law [11, p.104].

This situation was remedied in the new Romanian Code of Criminal Procedure, on the one hand, by introducing in Art. 335 para. (2) the condition of the appearance of "new facts or circumstances from which it follows that the circumstance on which the classification was based has disappeared ", for the prosecutor to order the reopening of the criminal investigation, and, on the other hand, by subjecting the prosecutor's order to reopen the criminal investigation to confirmation by the judge of the preliminary chamber, within no more than 3 days, under the penalty of nullity (Art. 335 para. (4) of the New Romanian Criminal Procedure Code) [11, p.104].

The same Romanian author *Cristinel Ghigheci* in his work reported that: "These provisions of the new Romanian Criminal Procedure Code determine the resumption, in part, of the old discussions in Romanian doctrine, regarding the applicability of the res judicata rule in the case of orders of the investigating judge or the decisions of the indictment chamber, by which it was ordered not to send the accused person to court. These were the acts by which it was ordered, in the Procedural Codes prior to the one of 1968, to send or not to send a case to court, persons accused of committing a crime and, being documents issued by a judge, the question of their character as res judicata was raised" [11, p.105].

If a referral to court was ordered, the order of the investigating judge or the decision of the indictment chamber had the effect of preventing the resumption of the criminal prosecution for the same facts and kept the court within the limits of the facts and the persons stated in them. If it was ordered not to send the accused person to court, it was considered that they had res judicata authority in certain situations. First of all, the court could no longer be referred to the same facts or the same persons unless it was ordered to reopen the investigation and this could only be ordered for new discoveries, a fact that was likely to give this procedure a close character of that of the review procedure [11, p.105].

The discussions that took place around the phrase *new discoveries* are also useful to delimit the content of the phrase *facts or new circumstances*, used by Art. 335 para. (2) NCPC, to justify reopening the criminal investigation.

In a first thesis, it was argued that the reopening of the criminal investigation is justified only in the case of the discovery of new elements after the adoption of the solution of not sending to court. Thus, it would be possible to reopen the criminal investigation and to discover some evidence that existed before the adoption of the non-prosecution solution, but due to the fault of the criminal investigation bodies, these were not discovered. This would make it possible to reopen the criminal investigation an unlimited number of times, by continuing the investigations by the

criminal investigation bodies, after the adoption of a decision not to send to court [11, p.105].

In another thesis, it was argued that not only the evidence born after the ruling of non-prosecution can be regarded as "new discoveries", because such a limitation is opposed by the very reason that led the legislator to admit the possibility of reopening the criminal investigation, then when new evidence can shed light on the matter. However, both the evidence that was born after the non-prosecution had been pronounced, and those that were born before this moment, but which were unknown to the investigating court or which, being known to it, could serve to fulfill this purpose could be found. The author of this opinion, V. Dongoroz, emphasizes, however, that "not every new evidence" is also a new discovery, but only those that were found after the non-prosecution was pronounced. A piece of evidence that was known and could be produced before the investigating courts had pronounced the removal from criminal prosecution can no longer legitimize the reopening of the investigation. If the contrary were to be admitted, then we would see endless requests to reopen the instruction in order to hear one more witness, and one more, and so on [11, p.105].

According to the Romanian criminal procedural legislation, the reopening of the criminal prosecution is ordered in the following cases: where it was interrupted by a decision to close or abandon the criminal prosecution [1, p.871-872].

a) If *the hierarchical prosecutor superior to the one who ordered the solution finds later, that the circumstance on which the classification was based did not exist* (Art. 335 para. (1) of the New Romanian Criminal Procedure Code (2010). In this situation, it is recognized the superior hierarchical prosecutor to the one who ordered the solution, the possibility in the framework of the hierarchical control carried out ex officio or upon complaint, according to Art. 339 NCPC, without considering a fixed term*, to deny the order of classification or abandonment of the criminal prosecution and to re-open the criminal prosecution by ordinance.* The reopening of the criminal prosecution *is not to be confused with the refutation of the criminal prosecution acts*, although there are also similarities between the two institutions. The institution of the refutation has a wider content, because it refers to any procedural act and procedural measure not in accordance with the law and represents a common way of exercising hierarchical control, while the reopening of the criminal investigation is ordered by the superior hierarchical prosecutor only in the case provided by Art. 335 paragraph (1) NCPC having as its object only a classification ordinance.

b) *If new facts or circumstances have appeared from which it follows that the circumstance on which the classification was based has disappeared* (Art. 335 paragraph (2) of the New Romanian Criminal Procedure Code (2010). Unlike the first situation, in which the superior hierarchical prosecutor is given the opportunity to reanalyze the factual or legal situation considered by the case prosecutor at the time classification, in the second situation, the case prosecutor is the one who will revoke the classification order and will order the reopening of the criminal investigation, basing this solution on the finding that the circumstance on the basis of which the classification was ordered has disappeared. There is no need for the facts or the new circumstances come into being after the classification solution, they can be before or after the solution. What is essential in the case of the previous ones is that they were not known to the prosecutor at the time of ordering the solution.

c) *When the suspect or the defendant has not fulfilled in bad faith the obligations established at the time of abandoning the criminal prosecution* (Art. 335 para. (3) of the New Romanian Criminal Procedure Code (2010). And in this situation, the case prosecutor will be the one who revokes the ordinance and will order the reopening of the criminal investigation.

d) *If the criminal prosecution was ordered to be classified or abandoned and the judge of the preliminary chamber, pursuant to Art. 341 paragraph (6) letter b) and paragraph (7) point 2 letter (b), admits the complaint against the solution and sends the case to the prosecutor in order to complete the criminal investigation.* In the previous form of the Romanian Criminal Procedure Code

(Art. 273 para. (1^1) of CPC 1968), it was stated that the provisions of the court were binding for the criminal investigation body in terms of the facts and circumstances to be ascertained and the evidence indicated. This regulation generated a contradictory judicial practice, in the sense that some courts considered that the prosecutor was not obliged to order the initiation or reopening of the criminal investigation, and other courts held the opposite.

Regarding this aspect, in the new regulation, the legislator not only does no longer make any distinction between the type of disposition given by the judge, but he expressly ruled that the prosecutor has the obligation to admit the complaint against the solution and sent the case to the prosecutor in order to completing the criminal investigation (Art. 335 para. (5) NCPC).

Once the case is sent to the prosecutor, the judge of the preliminary chamber has the obligation to expressly indicate the reasons for which he reached such a conclusion, the procedural document that the prosecutor must issue – the order to reopen the criminal investigation – the facts and circumstances on who is going to find them and by what specific means of proof will he make these findings.

It is to be observed that, in this situation, the legislator did not give the judge of the preliminary chamber the power to reopen the criminal investigation, but to order the prosecutor to order the reopening. This solution corresponds to the principle of the separation of judicial functions, according to which the function of criminal investigation, in all aspects, is exercised by the criminal investigation bodies. It is obvious, however, that in this hypothesis, the order to reopen the criminal investigation is no longer subject to the confirmation of the judge of the preliminary chamber, as in the other situations, for reasons that are easy to understand, consisting in the fact that the measure is ordered as a result of his disposition [1, p.873].

The author *Cristinel Ghigheci* [11, p.105-106] opined that the discussion is not without interest, from the perspective of Art. 335 para. (2) and (4) of the New Romanian Criminal Procedure Code (2010), which refers to the existence of new facts or circumstances, that justify the reopening of the criminal investigation and the need to confirm this reopening by the preliminary chamber judge. The latter will have to assess, upon confirming the reopening of the criminal investigation, whether the new facts or circumstances, which were the basis for it, could be discovered or not prior to the adoption of the non-prosecution decision, because, otherwise, the need to confirm the decision to reopen the criminal prosecution would no longer make sense, if it should be granted for any new evidence administered after the adoption of this decision. Moreover, the judge of the preliminary chamber must not make judgments on the conclusive nature of the new evidence, in establishing the guilt of the accused person, because he does not have this competence even when he decides on the legality of the criminal prosecution and the referral to court.

In the case of *Stoianova and Nedelcu v. Romania*, *(August 4, 2005, §17-25)* [12], the Court finds that the criminal investigation directed against the plaintiffs includes two distinct stages. The first began on 14 April 1993, with the arrest and detention of the applicants, and ended on 11 November 1997, when the prosecutor issued an order of removal from prosecution. The second one began on May 12, 1999, when the prosecutor's office ordered the reopening of the criminal investigation, and ended on April 21, 2005, with the termination of the criminal investigation ordered by the prosecutor's office. The Court cannot accept the Government's arguments according to which the first stage cannot be taken into consideration, in the sense of Article 6 paragraph (1) of the Convention. It considers that the order of removal from criminal prosecution given by the prosecutor on November 11, 1997 cannot be considered as ending the criminal prosecution against the applicants since it did not constitute a final internal decision... In this regard it must be noted that the prosecutor's office had, based on Art. 270 of the Criminal Procedure Code, the power to cancel an order of removal from criminal prosecution and to reopen the criminal prosecution without any deadline being kept. However, for the prosecutor it was not a simple theoretical possibility to reopen the procedure. The prosecutor's office was allowed to reopen the criminal inves-

tigation without being obliged to request the authorization of any national court, which would be obliged to analyze the merits of the request to verify, for example, if the reopening of the case was not unfair and if the time elapsed since the decision to terminate the investigation was not excessive. The Court cannot ignore, in this sense, the fact that the Romanian prosecutors, acting as magistrates of the Public Ministry, do not fulfill the condition of independence towards the executive. Similarly, the reopening of the criminal investigation was ordered on the grounds that the initial investigation had not been completed. However, these shortcomings of the authorities were not imputable to the plaintiffs and should not, therefore, put them in an unfavorable situation. Finally, the government has not demonstrated that the resumption of the criminal prosecution terminated by an order of the prosecutor has an exceptional character.

Ex officio reopening by a hierarchically superior authority of criminal proceedings that were replaced by an administrative fine, in the absence of new facts or fundamental defects that needed to be corrected – constitutes a violation of Art.4 of Protocol No. 7 of the Convention.

In the case of *Mihalache v. Romania (July 8, 2019 No. 54012/10§65)* [13], the notion of "fundamental defect" within the meaning of Article 4 para.2 of Protocol No. 7, suggests that only a serious violation of a procedural rule that seriously affects the integrity of the previous procedure can serve as a basis for reopening the latter to the detriment of the accused who was acquitted of a crime or punished for a less serious crime than that provided by the applicable law. Consequently, in such cases, a simple re-evaluation of the existing evidence in the file, by the prosecutor or by the hierarchically superior court, would not fulfill this criterion.

According to the ordinance of January 7, 2009, the reopening of the proceedings in question was justified by the different assessment made by the superior hierarchical prosecutor regarding the circumstances of the case, which, in his opinion, should have led to the imposition of criminal and not "administrative" liability in petitioner's burden. The superior hierarchical prosecutor also referred to the inadequacy of the sanction applied. A new assessment was made regarding the seriousness of the allegations against the petitioner and the sanction imposed on him. No mention was made regarding the need to remedy procedural rules or serious procedural omissions or in the investigative activity carried out by the original prosecutor. But, as noted above, a mere reassessment of the facts in light of the applicable law does not constitute a "fundamental defect" in prior proceedings. The Court considers that the arguments retained by the superior hierarchical prosecutor to justify the reopening of the proceedings based on the ordinance of January 7, 2009 are in contradiction with the strict conditions imposed by Article 4 para.2 of Protocol No.7.

Therefore, the reopening of the proceedings in this case were not justified by the exception established by this rule. The Court notes that the petitioner was convicted by the order of August 7, 2008, which remained final when another prosecution was initiated by the order of January 7, 2009. The superior hierarchical prosecutor tried to examine the same facts. There was no "new" evidence on the record, nor was there a "fundamental flaw" to be corrected. These two assumptions did not fit into any reason expressly provided for in the order to reopen the criminal prosecution (a new assessment of the facts) or in any desire to standardize the practice of prosecutors in assessing the "seriousness" of certain types of conduct.

Considering that none of the situations that allow the cumulation or reopening of the proceedings have been identified in this case, the Court concludes that the petitioner was prosecuted twice for the same crime, in violation of the ne bis in idem principle [13].

In the national jurisprudence, it was found that the unjustified resumption of the criminal prosecution regarding the defendant, i.e. in the absence of new or recently discovered facts, clearly violated the right of not being subject twice to criminal prosecution and criminal punishment for one and the same act. The circumstances invoked by the prosecutor in the ordinance of 22.12.2015, reopening the criminal process, such as the performance of the auto-technical – trackological expertise and its results, the hearing as a witness of the police inspector B.N. who

drew up the sketch on the spot, the verification of the statements on the spot of the driver "VAZ 21214" C.S. and the witness T.A., who requested to attach the photos taken by them with their mobile phone immediately after the accident, do not constitute new or recently discovered facts [14].

The circumstances invoked by the prosecutor, who ordered the resumption of the criminal investigation, do not constitute new or recently discovered facts because the circumstances mentioned above: a) could have been known at that time by carrying out the respective procedural actions within the criminal investigation, until the defendant was removed from the criminal investigation; b) does not represent evidence administered as part of the investigation of other cases, but being means of evidence through which evidence already known in the respective case was administered; c) are facts that existed on the date of adoption of the contested ordinance and that could be discovered by carrying out the nominated criminal investigation actions, which were resorted to, but after the defendant was removed from criminal investigation; d) does not represent the finding of the possible attitude of a party who, knowing a fact or a circumstance that was favorable to him, preferred to remain silent, if by other means of proof such circumstances could not be discovered at that time [15].

Conclusions. The resumption of the criminal prosecution is the criminal procedural institution being conditioned by the appearance of new or recently discovered facts, or a fundamental flaw that affected the previous decision regarding the termination of the criminal prosecution, the classification of the criminal case, or the removal of the person from the criminal prosecution.

The resumption of the criminal investigation must be based on compliance with the criminal procedural rules.

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INVESTIGATOR DESK: BASIC FOR INVESTIGATOR MOBILE APP

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Summary

The article discusses the development of an innovative mobile application designed to optimize and automate the investigative work within law enforcement agencies. It identifies that InDesk (InvestigatorDesk) is a cutting-edge mobile app specially created to support investigators in police and other law enforcement bodies, acting as a digital «work desk» for investigators. It provides tools for effective time management, criminal proceedings, evidence collection and analysis, investigation planning, communication with colleagues, and real-time access to necessary databases. The current needs and challenges faced by investigators in their daily work are explored, highlighting how modern mobile technologies enhance efficiency and productivity by offering rapid access to required information and resources. Special attention is given to data security issues, integration with existing information systems, and the app's adaptation to the specifics of law enforcement activities in Ukraine.

The technical aspects of data protection in InvestigatorDesk are analysed, considering legal and ethical requirements for mobile applications in criminal proceedings. Based on the analysis, a conclusion is drawn about InvestigatorDesk's significant potential as a tool to radically change crime investigation approaches, improve public order levels, and ensure more effective interaction among different law enforcement departments. The possibilities for further development and implementation of the app, as well as its potential impact on the overall criminal justice system in Ukraine, are outlined.

The article addresses overcoming potential obstacles and challenges during the development and implementation of the InvestigatorDesk mobile app in the law enforcement system, emphasizing the importance of inter-agency cooperation, the necessity of training and adapting users to new technologies, and the significance of ensuring the app's flexibility for effective adaptation to conditions in Ukraine and law enforcement activity requirements.

Attention is given to developing a user interface that is understandable and convenient for investigators of different ages and technical training levels, facilitating wider acceptance and use of the app in their daily work. The potential impact of InvestigatorDesk on improving interaction between civil society and law enforcement bodies, promoting transparency, and strengthening trust in the law enforcement area is highlighted.

Keywords: InDesk, InvestigatorDesk, mobile application, artificial intelligence, forensic science, investigator, police, law enforcement agencies, Ukraine.

Introduction. The creation of mobile applications for investigators in police forces worldwide is a relatively new but rapidly developing field that intersects with disciplines such as forensic science, criminal procedure, criminal law, and information technology. Analysis and reviews of the latest technologies in forensics, particularly the use of mobile applications for evidence collection, crime scene documentation, and identification of persons [1; 2; 3], research on the effectiveness of mobile applications in enhancing the operational work of police, especially investigators [4; 5; 6], including work dedicated to data security storage and transmission through mobile applications in the context of law enforcement activity [7; 8; 9; 10], and the analysis of the legislative framework for the use of mobile technologies in criminal investigations [11], have enabled the proposal for the comprehensive automation of the investigative process in Ukraine – InDesk (InvestigatorDesk) – an innovative mobile application, specially developed to support the work of investigators in police and other law enforcement agencies, which will serve as a digital «work

desk» for investigators, providing them with tools for effective management of work time and criminal proceedings, evidence collection and analysis, investigation planning, communication with colleagues, and access to necessary databases in real time. The app will include functionality for maintaining detailed records for each proceeding, including the ability to add photographs, video recordings, audio materials, and text notes directly from the scene. InDesk will simplify the processes of information exchange between different units and specialists, facilitate the speedy disclosure of crimes, and ensure uninterrupted access to up-to-date data and other materials, allowing investigators to quickly adapt to changing conditions and requirements.

Accordingly, the creation and operation of such a mobile application, InvestigatorDesk, for investigators in Ukraine could bring numerous benefits that will impact the effectiveness of pre-trial investigations, improve communication among law enforcement officers, and generally enhance the quality of justice through:

• Increased mobility and flexibility: work from any location (the app will allow investigators to work efficiently in the field, at crime scenes, in the office, or on the go, providing access to all necessary tools and data); independence from stationary systems (investigators are not limited to stationary workplaces and can be more reactive to developments).

• Improved communication and coordination: instant communication (instant messaging and file-sharing functions will simplify collaboration among investigators, operational groups, and other agencies); action coordination (the ability to jointly plan investigations and tasks in real time will help avoid duplication of work and improve coordination among different units).

• Ensured data security and confidentiality: sensitive information protection (the use of advanced encryption methods and security will protect against unauthorized access to confidential data); access control (an access level system will limit information access, ensuring it's available only to authorized persons).

• Enhanced quality and transparency of justice: process standardization (InvestigatorDesk will facilitate the standardization of procedural actions, ensuring uniformly high quality); tracking the progress of investigations (transparency of all investigation stages will help ensure compliance with legal requirements and human rights).

• Resource optimization: time and resource savings (reducing the time spent on administrative tasks and paperwork will allow for more efficient use of human and material resources); increased productivity (optimization of work processes and increased investigation efficiency will lead to a significant increase in the overall productivity of law enforcement agencies).

• Improved efficiency of investigations: quick access to information (InvestigatorDesk will provide instant access to necessary data and documents, significantly reducing the time required for information search); automation of routine processes (automating tasks such as record-keeping, document preparation, and reporting will free investigators from manual work, allowing them to focus on more critical aspects of investigations).

Therefore, the introduction of the InvestigatorDesk mobile application will be a significant step in improving the operation of Ukraine's law enforcement system, increasing the efficiency of investigations, and ensuring a higher level of justice. However, the development of a mobile application for investigators in Ukraine, like anywhere else, will face various challenges and obstacles at different stages of implementation, including:

• Legal and regulatory restrictions: data protection and confidentiality (requirements for data protection and confidentiality significantly influence the app's architecture and functionality, especially considering regulatory acts like GDPR in Europe or similar Ukrainian regulations); legal audit (the need to comply with various regulatory standards complicates the development and launch process).

• Technical challenges: integration with existing systems (integration with various databases and systems of law enforcement agencies is complex due to differences in technical standards

or outdated software); data protection (developing a reliable data protection system that ensures the confidentiality and security of sensitive information).

• Financial constraints: budget limitations (high development and maintenance costs will be a barrier); securing investment (finding for development and launch will be a challenge, especially in the early stages of the project).

• Social and cultural aspects: resistance to change (potential resistance to change from investigators accustomed to traditional methods of work will slow down or complicate the introduction of a new app); training of investigators (the need to train investigators and other users in effectively using the new app).

• Issues of effectiveness and acceptance: user trust (building trust in the new app, especially in the law enforcement system where mistakes can have serious consequences); ensuring high efficiency (developing an app that not only meets technical requirements but also becomes truly effective and useful for investigators in their daily work).

• Technical support and updates: continuous updating (the need for regular app updates to correct errors, improve functionality, and adapt to changing legal requirements); technical support (providing reliable technical support for users to resolve any emerging issues).

Overcoming these obstacles requires clear planning, interaction with stakeholders, flexibility in project management, and understanding of the specifics of the law enforcement system and user needs. Therefore, creating a mobile application for investigators in Ukraine, like in any other country, requires thorough planning, understanding of user needs, and consideration of specific regulatory requirements. Here are the main steps for creating such an app:

– Needs assessment and analysis: engaging stakeholders (collaboration with law enforcement officers, investigators, lawyers, and other experts to determine their needs and app requirements); analysis of existing solutions (researching available tools and systems already used in the law enforcement field to identify their strengths and weaknesses).

– App concept development: defining goals (determining the key functions the app should perform and the objectives to be achieved); prototyping (creating mock-ups and prototypes of the interface for visualizing functionality and user interaction).

– Technical planning: selecting technologies (determining the technology stack for development, such as programming languages, frameworks, databases); security architecture (developing a data protection strategy, including encryption, authentication, and access control).

– Development and testing: app development (starting coding using agile methodologies for effective management of the development process); testing (performing thorough testing of the app, including unit testing, integration testing, security testing, and UX/UI testing).

– Launching a pilot version (implementing the mobile app in a limited area or among a limited group of users for feedback collection and additional testing in real conditions).

– Collecting feedback and optimization: evaluating user feedback to identify necessary improvements or additional features (feedback analysis); continuous app improvement based on received feedback and changes in legal regulation (development iterations).

– Ensuring compliance with regulatory requirements (consulting with lawyers to ensure the app's compliance with current data protection, privacy, and other regulatory requirements).

– Launch and support: deploying the app on law enforcement platforms (official launch); providing technical support, releasing updates to improve functionality and correct errors (updates and support).

Thus, creating a mobile application for investigators in Ukraine requires not only technical expertise, but also a deep understanding of the legal system, user needs, and challenges they face. With the right approach and completion of all stages, such an app will become an important tool for enhancing the efficiency of the law enforcement system.

The mobile application InvestigatorDesk for investigative work should be a comprehensive

tool covering all aspects of an investigator's activities. Its core components and functionalities should include:

1. Work Time Organization Module. This will serve as a tool for effective planning and management of investigators' work time, unrelated to specific cases. Key functionalities of the module will include:

– A work time calendar allowing investigators to view and manage their work schedule, including meeting schedules, court sessions, crime scene visits, and other professional duties.

– Task planning and reminders, enabling the creation, assignment, and tracking of tasks needing completion, with automatic reminders for approaching deadlines or important events.

– Time logging and reporting tools for recording time spent on various activities, allowing for analysis of workload and work efficiency.

– Productivity analysis for evaluating the effectiveness of work time use, identifying peak workload periods, and optimizing resource distribution.

– Synchronization with external calendars, including integration with popular calendar services like Google Calendar or Microsoft Outlook, to ensure the investigator's work calendar aligns with personal and professional events.

– Customizable settings, allowing users to personalize the calendar appearance, reminder settings, and other preferences according to their individual needs.

2. The Case Management Module is a critically important component aimed at optimizing and automating processes related to criminal proceedings and investigations, providing investigators with comprehensive tools for effective management of all aspects of case work, from registration to closure. A brief description of the key functions of the module includes:

– Registration and categorization of cases: an intuitive interface for creating new cases (investigators can quickly register new criminal cases by entering information about the crime, victims, suspects, and witnesses); categorization and tagging (for ease of organization and search, cases can be categorized by type of crime, geographical location, investigation status, or other criteria).

– Investigation planning: an automated task calendar with the ability to plan and remind about tasks, meetings, deadlines, and task distribution (tools for creating teams, assigning tasks to team members, and tracking their execution with functional and other gradations).

– Evidence management: centralized storage (storing all evidence related to the case in digital format, including documents, photographs, video recordings, and audio materials); version control and change history (ensuring tracking of changes and additions to the evidence base, guaranteeing the integrity and immutability of information).

– Tracking the status and progress of the investigation: dynamic tracking of the case status (the system will allow investigators to update the case status in real-time, reflecting the progress of the investigation); activity log (automatic logging of all actions related to the case, including status changes, adding new evidence, investigator notes, etc.).

– Collaboration and information exchange: team access allowing setting up shared access to the case for the entire operational group, facilitating effective teamwork; integration with communication tools (exchange of documents, evidence, and information between investigators and other interested parties through secure communication channels).

– Reporting and analytics: report generation (automated creation of reports on cases, including analysis of investigation progress, resource usage, and effectiveness); analytical tools (built-in analytics tools will help to identify patterns, analyse the effectiveness of investigations, and plan further actions strategy).

3. The Data Collection Module in the InvestigatorDesk mobile app will represent an integrated set of tools designed for efficient collection, processing, and analysis of various types of data used by law enforcement agencies. This module will help investigators quickly document infor-

mation at the scene, maintain an electronic record of evidence, and ensure centralized storage of all collected information. The Data Collection Module in InvestigatorDesk is aimed at maximizing the efficiency of processes for collecting, processing, and analysing information that is significant for criminal proceedings. It will provide investigators with access to powerful tools directly from their mobile device, significantly increasing the speed and quality of work with evidence and other critically important information. The main components and functional capabilities of the module include:

– Event scene documentation: integration with GIS (geographic information systems) (will allow determining the exact location of the event scene using GPS coordinates and marking them on electronic maps in the app); photo and video documentation: integrated tools for creating photographs and video recordings of the scene, which will be automatically added to the case with time and geolocation tagging.

– Evidence collection and processing: electronic documentation (the ability to quickly create and store electronic copies of documents, witness statements, official declarations, etc.); biometric data (tools for collecting biometric data (fingerprints, DNA, facial recognition) with the possibility of their further identification and analysis).

– Information analysis and processing: digitization and text recognition (OCR (optical character recognition) functions for converting document images into editable text); classification and cataloguing (automated classification and organization of collected information for ease of search and access to data).

– Integration with other systems and databases: data exchange (the ability to exchange information with other law enforcement and government databases for verification of information, obtaining additional data, or identifying connections); integration with forensic tools (compatibility with specialized forensic software for detailed analysis of collected data).

4. The Communication Module, which will include messaging exchange (built-in means for secure exchange of text messages, files, and documents between investigators and other departments) and notifications (a notification system for informing about important events or changes in cases).

5. The Legal Reference Guide with access to regulatory acts (a database of current laws, instructions, and methodological recommendations necessary for investigative work) with a search function for quickly finding the necessary regulatory acts.

6. The Analytics and Reporting Module, consisting of data analysis (tools for analysing collected data and identifying patterns) and report generation (automated creation of reports on the results of investigations for further use in pre-trial and court proceedings).

7. The Security Module, which will include encryption (ensuring data security using modern encryption methods) and authentication and access control (mechanisms for user authentication and access control to sensitive information).

Accordingly, the development of such a comprehensive tool as InvestigatorDesk requires a deep understanding of the needs of investigators, technical expertise, and continuous feedback from end-users to adapt the functionality to real work conditions. Overall, such modules will significantly increase the organization of the work process, allow investigators to better plan their time, minimize downtime, and increase overall work productivity. Moreover, this will contribute to a better balance between work and personal life, reducing the risk of professional burnout.

Ensuring the security of information in the InvestigatorDesk mobile application for investigators, especially for tasks involving the determination and storage of location data, requires an integrated approach that includes the use of the latest protection technologies, adequate system architecture, and compliance with established legislative norms, including:

– Encryption of information (using encryption to protect data during transmission using SSL/TLS protocols, which will ensure reliable protection against unwanted access, and encrypt-

ing information stored on devices using specialized algorithms to prevent risks in case of loss or theft).

– Access management (implementing multifactor authentication to verify the identity of users before accessing the application and limiting access to information, providing users only with the data and tools they need to perform their tasks).

– Monitoring and logging (recording all actions with data, including location data, for audit purposes and detecting unauthorized actions, as well as continuous monitoring of security systems to detect attempts at unauthorized access).

– Physical security and updates (ensuring the physical security of servers where data is stored, regular updates of software and operating systems to correct vulnerabilities).

– Compliance with regulatory requirements (developing and implementing policies that meet national and international data protection standards, such as GDPR in Europe or similar laws in Ukraine, regarding data protection).

– Restrictions on the use of geolocation data (ensuring access to geolocation data only when strictly necessary, using anonymization and limiting the storage of location history with clear storage terms).

The above actions will facilitate the development of an information protection strategy in the InvestigatorDesk mobile application for investigators, which is key and a priority for ensuring data security and the effectiveness of law enforcement activities.

Conclusions. Thus, InvestigatorDesk represents an important step towards the digitization and technological support of Ukraine's law enforcement system, offering integrated tools for improving the efficiency and quality of pre-trial investigations. The mobile application has the potential to revolutionize the daily work of investigators through the optimization of case management processes, automation of data collection, and enhancement of communication among law enforcement officers. The use of advanced technologies, such as artificial intelligence for data analysis and geographic information systems for tracking event locations, opens new perspectives for crime detection and strengthens public order. However, successful implementation and effective use of InvestigatorDesk require not only technological development but also consideration of legal, ethical, and psychological aspects related to investigative activities. It is crucial to ensure a high level of data security, protect confidential information, and the ability to integrate with existing law enforcement systems and databases. Considering the foregoing, it can be concluded that InvestigatorDesk has enormous potential for transforming Ukraine's law enforcement sphere, offering tools to increase transparency, efficiency, and accountability in investigative work. The development and dissemination of such applications for other professions could become a key factor in modernizing Ukraine's law enforcement system and enhancing public trust in justice.

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THE SCOPE AND LIMITS OF APPLYING ANALOGY IN THE CONTRAVENTIONAL PROCESS

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Summary

In the proposed study, the author addresses the issue concerning the possibility of applying analogy of law in the contravention process.

The question is discussed whether the legislator did not prohibit analogy in the procedure for examining and sanctioning a contravention. Moreover, it was expressly provided for in the application by analogy of the provisions of the Code of Criminal Procedure.

This leads to the conclusion that it is necessary to apply the procedural rules of the Code of Criminal Procedure by analogy, not only because the procedural law does not prohibit it, but also because of the necessity of applying such an approach.

In perspective, the issue of a body of rules on the application of analogy, combined with rules of an interpretative nature, will be discussed in parallel with the subject referred at issue.

Keywords: contravention process, legal rule, analogy, law, criminal process, legislation, law.

Introduction. Throughout the centuries, humans have managed to invent many things. Over time, some of them remain forgotten, others become outdated, and only a remarkably small number of things retain their relevance regardless of the passage of time.

One of those things that represents a perpetual necessity and is in an uninterrupted process of improvement is the law.

Often, we find the need for a different way to regulate a social relationship. This happens as soon as a norm begins to become inconvenient or insufficient.

At the same time, the entire process of adopting legal norms is conditioned by certain rules, which themselves have the character of a legal norm.

This once again speaks to the fact that inevitably law comes to regulate social relationships „following” necessity.

Therefore, to avoid the vicious circle, we have become accustomed to attributing an axiomatic character to some rules, so that both their necessity and authority are often unquestioned. Moreover, these rules often represent a „taboo” for discussions.

In addressing such a subject today, which has been under the „indisputable” label for a long time, we want to refer to the issue related to the „analogous application of the contravention law”.

We start addressing the subject from the hypothesis that Article 5 of the Contravention Code establishes axiomatically that the application by analogy of the contravention law is prohibited [2, art.5].

At the same time, the explanatory dictionary of the Romanian language indicates that analogy represents a method of solving a case unforeseen by law but similar [3]. By deduction, we should understand that for the situation in which the Contravention Code does not establish any

norm that would regulate a certain situation, this case should not be subject to resolution or at least addressed through the prism of the Contravention Law.

And we must understand that the legislator establishes such a rule imperatively, a matter that does not admit exceptions.

We all understand that „The Law" is enacted not for a particular case but for a multitude of cases, including those for the future, still unknown in their variety of manifestations at the time of adopting the legal norm.

At the same time, to conclude that the Law „does not cover" a social relationship through its text and meaning, we must resort to a series of interpretative actions. From here, we come up with the rules that dictate the character of the legal norm, which tell us that the legal norm must be perceived not only through the prism of its text but above all through the prism of its spirit, where the spirit or soul of the law is only reflected through its text, and often only partially.

Therefore, in applying the law, we should not limit ourselves only to identifying the semantic content of the text but also to identify the purpose pursued by the legislator, namely for the moment when a legal norm was adopted. And this is because it is not the text of the law that determines its purpose, but the purpose of its enactment that determined the text of the law.

Therefore, we deduce with simplicity the fact that the text of the law, however successful it may be, still admits the probability that it may not perfectly reflect the purpose pursued by the legislator in adopting this law. A text of law can have the effect of an interpretation that exceeds the limits of the purpose pursued by the legislator (extension), but it can also restrict the limits of the purpose pursued by the legislator (restriction).

However, we must not forget that the will of the legislator is law and not the text laid down on paper. Therefore, the non-coincidence between the text of the law and the will of the lawgiver generates the need to admit exercises of interpretation but also the application of analogy.

Although in specialized literature, especially in public law, it is customary to consider, but also to argue, that when a rule from a text of law refers to the rules established by another law, this is not an analogy, but we are facing the existence of a blanket rule.

We consider that such an approach would be one with a loophole because the blanket rule, or as the term „reference" is more commonly used, represents only a mechanism for realizing analogy, and moreover, only one type of analogy. In doctrine, this is called „regulated analogy" or „analogy by law" or „analogy of the law". In this sense, the Civil Code, in Article 6, establishes that in the case of non-regulation by law or by agreement of the parties and the lack of usage, to the relations provided by the Civil Code, if this does not contravene their essence, the norm of the civil legislation regulating similar relations shall apply (analogy of the law) [1, art.6].

At the same time, there may also be „unregulated analogy" or „pure analogy", which most often is present in private law, is subject to the situation where the application of the analogy of the law is impossible, where the rights and obligations of the parties are determined according to the principles of civil legislation and equity (analogy of law) [1, art.6].

Most often, analogy aims to exclude the restriction by text of the real will of the legislator. Sometimes, however, it aims to have the opposite effect – restriction.

All these truths allow us to question any rule claimed to have an axiomatic character. And this is because even rules with an axiomatic character were adopted at their time only due to the needs dictated by the circumstances of the moment.

We address all these because although in public law norms are characterized by rigidity, and the rule regarding the inadmissibility of analogy, applied through the text of Article 5 of the Contravention Code, seems natural, we still find that in substantive contravention law, as well as in procedural contravention law, we have a multitude of blanket rules, where in fact we are facing an effective mechanism of intensive application of analogy.

And here we are not referring to the rules that determine the content of the sanctioned act

but to the content of a series of rules that determine the condition of applying a multitude of institutions. As an argument, we start from the hypothesis that, as mentioned, Article 5 of the Contravention Code establishes a rule according to which the analogous application of the contravention law is not allowed. From the text of this rule, but also in correlation with the provisions of Article 1 of the Contravention Code, it clearly results that the analogous application is not allowed for both material and procedural norms.

Article 374 of the Contravention Code establishes that the contravention process is conducted based on the Constitution, international agreements to which the Republic of Moldova is a party, the present Code, and the Code of Criminal Procedure. And if the Constitution is a legislative act with a superior power, as well as the international agreements to which the Republic of Moldova is a party, then the Code of Criminal Procedure does not represent a legislative act superior to the Contravention Code. From here, many of the situations not regulated by the text of the Contravention Code in judicial practice, as well as in the practice of identifying contravention cases by constatation agents, are specifically applied in contravention procedure matters, according to the provisions of the Code of Criminal Procedure.

In this way, both the constatation agents and the courts solve some situations not foreseen by the Contravention Code by resorting to the application of the provisions of the Code of Criminal Procedure for similar situations. An example could be the institution of recusal, the institution of summons, the institution of civil action (for compensation) and for reimbursement of procedural expenses, the institution of hearing the parties, etc.

Each time the court, as well as the constatation agent, resort to the application of the provisions of the Code of Criminal Procedure to resolve a situation not foreseen by the Contravention Code, they resort to the analogy of the law. Therefore, we find that in a multitude of cases, namely in the contravention process, analogy is applicable, and namely through the application of analogy, the finality in the contravention process is actually achievable.

At the same time, the question arises regarding how we should understand the text of Article 5 of the Contravention Code, especially in correlation with the provisions of Article 1 of the Contravention Code, since a multitude of norms impose the application of contravention procedural norms by analogy [2, art.5].

The answer is found in what we started our story with. From the start, the legislator embarked on the wrong path by merging substantive law with procedural law into a single legislative act. But even so, the fundamental mistake was made when, in Article 1 of the Contravention Code [2], the legislator „mixed" substantive law with procedural law, attributing them a single term - the term „contravention law", and as a result, assigning the specific principles only to substantive law and the contravention process.

In our opinion, just as we do not find in the Code of Criminal Procedure the prohibition of applying analogy, a matter that is largely justified especially for acts with a consensual character, correspondingly, analogy should not have reflected in the contravention procedure either.

From here, we will consider that the legislator „erred" by stating in Article 5 of the Contravention Code that the application by analogy of the contravention law is prohibited. Although it used such an expression, but especially since this principle is found only in the general part of substantive law (Book One) and is not found in the general part of procedural law (Book Two), then we should understand that the legislator had in mind (aimed at) prohibiting analogy only regarding „which act is a contravention" and „how a contravention is punished". As for the procedure for examining and sanctioning the contravention, the legislator did not prohibit analogy. Moreover, he even expressly provided for it regarding the application by analogy of the provisions of the Code of Criminal Procedure.

However, the problem series does not stop only at the application of analogy through the provisions of the Code of Criminal Procedure. In the contravention process, there are a multitude

of procedural acts that are not regulated by either the Contravention Code or the Code of Criminal Procedure. I refer to acts that are based on the agreement of the parties to the process. It is about the act of reconciliation, the act of acknowledgment of guilt, the act of amicable establishment of the road accident, and others.

The condition for concluding, as well as a multitude of effects of these acts, are not regulated in the text of the Contravention Code, but also in that of the Criminal Procedure Code. It is evident that both practice and necessity impose neglecting the provisions of Article 5 of the Contravention Code, and applying for these cases the analogy of law, by applying the conditions and rigors provided by the Civil Code.

In conclusion, I want to mention that the revision of the concept of limiting the application of analogy in contravention law is to have as its finality only its application regarding the identification of the act and the applicable sanction concerning the contravention act. This is not only logical but also necessary.

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IMPROVING THE CRIMINAL LEGISLATION OF THE REPUBLIC OF MOLDOVA WITHIN THE CONTEXT OF THE EUROPEAN INTEGRATION: PERSPECTIVE SOLUTIONS AND ARGUMENTS

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Summary

The issue of improving criminal legislation from the perspective of the European integration of the Republic of Moldova is addressed in this study. The author substantiates the need for the legislative harmonization of the national criminal norms to the standards derived from the European Union (EU) acquis. In the meanwhile, the author identifies several vulnerabilities of the national normative framework that require either a legislative reconceptualization in accordance with the unanimously recognized European values, or an updating of the norms to the new social realities resulting from the tendencies to commit new harmful deeds. Resorting to critical approaches, the author offers forward-looking legislative solutions, the implementation of which would maintain the sustainability of the development of national criminal legislation. Even if the study mostly presents subjective views, we hope that some approaches will find a pragmatic utility in the legislative work to reform the criminal law of the Republic of Moldova.

Keywords: criminal policy, criminal law, criminal offence, criminal penalty, democratic values.

Introduction. The Criminal Code of the Republic of Moldova was adopted by Law no. 985-XV of April 18, 2022, implemented on June 12, 2003. Up to that time, in the Republic of Moldova, a young state, formed in 1991 after the collapse of the USSR, the Criminal Code of the Moldovan Soviet Socialist Republic of 24.03.1961 was applied. The distinguished criminalist A. Borodac, one of the main authors of the Criminal Code of 2002, mentioned that when drafting the new criminal law "the new principles of the criminal policy were analyzed, specified and argued: aligning the criminal legislation of the Republic of Moldova with the hierarchy of social values accepted by states based on law; coordination of criminal legislation with the criminogenic situation; ensuring maximum differentiation of criminal liability; raising criminal legislation to the level of universally recognized international norms; stipulation of criminal legislative principles in the text of the criminal law… etc." [1, p. 9].

Therefore, through the adoption of the Criminal Code of 2002, the reformation of the criminal policy of the Republic of Moldova from those times was pursued, by modernizing the legal-penal institutions and the incriminating system in order to align criminal justice with the authentic democratic values that the young state was striving to achieve. The need to develop new criminal legislation also derives from the multiple positive obligations assumed towards the European structures, which made it possible to develop new national standards in the field of criminal justice.

From the moment of its entry into force until now, under the influence of several factors, especially under the influence of political instability, the 2002 Criminal Code of the Republic of Moldova has been subjected to numerous legislative amendments. Many of these legislative amendments were not able to lead to the desired improvement and shaping of criminal provisions to the

new social realities and standards. On the contrary, some laws supplementing and amending the Criminal Code of the Republic of Moldova have created multiple uncertainties and confusions in the application of the national criminal law. In the following, in order to measure the qualitative level of evolutionary-progressive development of the national criminal legislation, we will substantiate some priority directions, which in our view will boost the legislative work of adopting national criminal norms in accordance with the European aspirations of the Republic of Moldova.

Discussions and results obtained. *Scientific substantiation of the draft laws*. The normative projects must be developed based on critical studies of the elements of criminal law (institutions, entities and crimes) that are to be subject to regulation within the criminal norms subject to legislative amendment. The distinguished criminalist V. Dongoroz claimed "... critical study involves a thorough knowledge of positive law and the scientific data that are contingent on it" [2, p. 215]; "...critical study paves the way for legislative progress" [2, p. 215]. On the one hand, the investigations resulting from the critical study have as their purpose the correction or, as the case may be, the progressive development of the criminal norms. On the other hand, the *ferenda law* proposals inspired by the critical study give an increased dose of the quality of the criminal rules, thus ensuring the legality of their application. Therefore, legislative projects developed based on intuitive knowledge, even if such knowledge results from experience, cannot be likely to bring an expected amelioration, improvement or evolution of positive criminal law.

An eloquent example in this sense is the legislative amendment operated by the Law for the modification of some legislative acts No. 179 of 26.07.2018 by which the incriminating norm of excess of power or exceeding the service duties was supplemented in Art. 328 of the Criminal Code with a new statutory method established in paragraph $(1)^1$. According to the incriminating text, it constitutes a crime: "the unfounded refusal to release the permissive act that led to the restriction of the right to carry out the entrepreneurial activity, including the unfounded carrying out of some controls, if this caused damage to the rights and interests protected by law of natural or legal persons, in the amount of at least 10 average monthly wages for the forecasted economy, established by the Government decision in force at the time of the act".

It follows from the formulation of the criminalization norm that the act cannot be approached as a special or exclusive form of power excess or the official duties exceeding. Between the excess of power provided for in Art. 328 paragraph (1) of the Criminal Code of the Republic of Moldova and the one stipulated in Art. 328 paragraph (1^1) of the Criminal Code of the Republic of Moldova, there cannot be a general-norm and special-norm relationship. In essence, by these two incriminating norms, criminal liability is established for two crimes with a different legal substance. The crime of typical power excess can be committed only through the form of the action, which consists of the performance of an act through which persons make an excess of competence, through which the scope of functional attributions is exceeded. While the offense established in Art. 328 paragraph (1^1) of the Criminal Code of the Republic of Moldova can also be carried out in the form of the inaction of "unfounded refusal to issue the permissive act", which essentially involves an abuse of office.

Thus, according to the functional competence, the public person, on the one hand, has the competence to carry out such an action, and, on the other hand, is obliged to carry it out when the applicant meets the legal conditions for issuing the permissive act to carry out the entrepreneurial activity.

Furthermore, the crime established in Art. 328 paragraph (1^1) of the Criminal Code of the Republic of Moldova can assume the form of excess of power only when it is committed by performing unfounded state controls. Based on the reasons presented, we conclude that the normative method established in Art. 328 paragraph (1^1) of the Criminal Code of the Republic of Moldova, only partially can constitute a special norm against the excess of power or the exceeding of the duties provided for in Art. 329 paragraph (1^1) of the Criminal Code of the Republic of Moldova,

namely when the act is committed by *carrying out unfounded controls*. In case of *the unjustified refusal to release the permissive act,* the fact provided for in Art. 328 paragraph (1[1]) of the Criminal Code of the Republic of Moldova constitutes a special form of abuse of power or abuse of official position provided for in Art. 327 of the Criminal Code of the Republic of Moldova. Based on the above observations, we consider that the legislator unjustifiably established criminal liability for the unfounded refusal to issue the permissive act and the implementation of controls under Art. 328 of the Criminal Code of the Republic of Moldova.

Reconceptualization of the fundamental principles provided for in the Criminal Code of the Republic of Moldova. The principles of criminal law constitute the basis of criminal legal regulations and institutions, linking and uniting criminal law into a unitary entirety. Good knowledge and application of criminal rules is indispensable conditioned by the correct understanding of the principles of criminal law. Although in the Criminal Code of the Republic of Moldova from 2002, unlike the one from 1961, the fundamental principles of criminal law found their express consecration; this regulation being carried out in a clumsy manner, without taking into account the evolutionary trends of the European criminal law. Therefore, some of the principles enshrined in the Criminal Code of 2002 were defined in a confusing manner, inappropriate to the rigors of the time.

Fundamentally, the legal notion of the principle of legality enshrined in Art. 3 paragraph (1) of the Criminal Code from 2002 can be exemplified, which essentially represents nothing more than an almost faithful reproduction of Art. 3 of the 1961 Criminal Code[1]. Currently, the principle of criminal legality is no longer approached in its classical sense only as a fundamental principle of criminal law, but as a fundamental right of the person - guarantor of the intolerance and non-application of criminal arbitrariness as a repressive tool against citizens. Subsequently, the normative concept of criminal legality has taken significant evolutionary turns in contemporary criminal law, turns that cannot be found in the notion stipulated in Art. 3 paragraph (1) of the Criminal Code of the Republic of Moldova. For these reasons, we suggest to the national legislator that the definition of the principle of criminal legality should be based on taking regional and international standards into account (The Charter of Fundamental Rights of the European Union – art. 49; Convention for the Defense of Human Rights and Fundamental Freedoms – art. 7; The Rome Statute of the International Criminal Court – art. 22, 23, etc.), as well as on the positive experience of criminal legislation in European states (for example, art. 2 of the Romanian Criminal Code).

De-Sovietization of criminal legislation. One of the main objectives pursued by the legislator when adopting the Criminal Code of the Republic of Moldova from 2002 was "...the exclusion of the declarative character and ideological clichés, characteristic to previous criminal legislation…" [1, p. 9]. In other words, the aim was to rid the national criminal legislation of Soviet ideology, which is not congruent with the democratic values and ideals of a state governed by the rule of law. At that time, it was not possible to achieve this objective, for the simple reason that the basis for the elaboration of the national criminal law was the Model Criminal Code of the Commonwealth of Independent States (CIS) of 17.02.1996, strongly influenced by the old Soviet legislation and criminal doctrine.

Under these conditions, in the criminal legislation in force of the Republic of Moldova, Soviet models of approach to legal-penal institutions have been preserved, including the model of criminal acts incrimination. Several examples can be given in this regard. For example, the legislative concept of "abductions" approaching was substantiated in the 80s of the last century by

[1] The principle of criminal legality is defined in art. 3 paragraph (1) of the Criminal Code as follows: "No person can be declared guilty of the commission of a crime nor be subject to a criminal punishment other than on the basis of a decision of a court and in strict compliance with criminal law". A similar definition was stipulated in art. 3, thesis II of the Criminal Code of the MSSR from 1961, called "The Grounds of Criminal Liability": "No one can be declared guilty of a crime, as well as subject to a criminal penalty, except on the basis of a court sentence and in accordance with the law".

Soviet doctrinaires. According to this concept, the legal classification of the forms of abduction is to be carried out based on a general notion, which would reflect a set of defining features that would characterize all forms of abduction. Currently, such a concept seems to be completely outdated, as it is difficult to imagine that the physical abduction of an asset and the abduction of an asset through computer fraud fall under the pattern of a single notion of theft. Moreover, due to the clichés of this concept, the fraudulent acquisition of the right to immovable property cannot be included under the rules of abduction, a fact that creates favorable conditions for the crime "prosperity" in this segment.

Abolition of defining or estimative signs describing crimes in favor of using descriptive signs. It is a necessary process to improve the quality of the criminal law, which fits perfectly into the idea of de-Sovietization of the criminal law. In the Soviet specialized criminal doctrine, V. Kudreavţev defined the estimated marks or evaluation marks as those legal requirements determined by the norm of incrimination upon the practical finding of which lies the conscience of the official interpreter who applies the criminal law, "by taking into account the provisions of the Criminal Code and the factual circumstances characterizing the specific criminal case" [3, p. 134]. In our view, such an approach no longer corresponds to the rigors of time, since neither the judge, nor the official or doctrinal interpreter of the criminal law should replace the legislator and intervene where the criminal law does not inspire clarity and predictability.

The difficulty of interpreting of the "estimated signs" undefined by criminal law is determined by both objective and subjective factors. The category of objective factors can be attributed to the lack of criminal regulations that would establish certain measurable criteria on the basis of which these signs or component sub-elements of crimes are to be determined. To the category of subjective factors can be attributed the incompetence, ill-will, lack of experience or inadequate training of the person interpreting the criminal law. The existence of estimative signs offers the possibility of a subjective assessment of the criminal rules, assessments that do not always subscribe to the will of the legislator. Moreover, these assessments favor the arbitrary application of the criminal law by seriously violating the principle of the legality of incrimination.

Currently in the criminal legislation there is a positive tendency to abolish or avoid the use by the legislator of the estimated signs when describing the signs of the components of the crime.

First of all, such a trend is determined by the jurisdictional activity of the Constitutional Court of the Republic of Moldova. In the case of norms incriminating, notifications regarding the control of unconstitutionality are, as a rule, admitted by the Constitutional Court in relation to the texts of the criminal law that contain "defining" or "estimative" signs of the components of the crime that are not defined by the criminal law, whether they know a non-uniform interpretation in judicial practice. The total or partial acceptance of the requests regarding the exception of the unconstitutionality of the texts of the incriminating norms, which do not meet the quality requirements of the criminal law, has the effect of the unconstitutionality of the objective or subjective sign(s) of the composition of the crime described in the respective part of the norm. Like the part of the norm, these constitutive signs, become null and can no longer justify the classification of a prejudicial act as a crime from a legal point of view.

In the second place, when adopting laws amending or supplementing the Criminal Code, the tendency of the legislator to no longer enshrine in incriminating texts defining signs, not described by the criminal law, is evident. For example, through the *Law No. 316 of 17-11-2022 for the modification of some normative acts (ensuring the rights of victims in the case of crimes related to sexual life and domestic violence)* the crime of rape (art. 171 of the Criminal Code), as well as the crime of non-consensual sexual actions (art. 172 of the Criminal Code) in the new wording, it no longer contains aggravating actions that *caused other serious consequences*. We appreciate this evolutionary process as a beneficial one for measuring the level of quality of the criminal law, but it must be continued with regard to other crimes whose descriptive signs were declared unconsti-

tutional by the jurisdictional activity of the Constitutional Court.

Systematization and clear normative differentiation between the rules of substantive criminal law and the rules of formal criminal law. In the legal system of the Republic of Moldova, there is an "unhealthy" tendency to enshrine some substantive criminal law norms in the Criminal Procedure Code. Without pretending to analyze all situations of this kind, we will stop at the most recent case operated by *Law no 286 of 05.10.2023 for the amendment of some normative acts* by which the Criminal Procedure Code was amended and supplemented in the part related to investigative activity. Thus, in Art. 118 paragraph (8)[11] of the Criminal Procedure Code, the following notion has been foreseen: simulated misdemeanor/crime, as that "misdemeanor/crime which, although it formally meets the elements of the misdemeanor/crime, does not constitute a misdemeanor/crime and is committed only for the purpose of maintaining the legend, proving the existence of the crime and identifying the perpetrator"[2].

Through this legislative amendment, a new concept is introduced in the field of criminal law – *simulated crime*, a concept which, nevertheless, was not passed through the filter of the legal provisions relating to the crime stipulated in the criminal legislation. This is also valid for the *simulated misdemeanor***,** a concept that had to be correlated with the provisions of the Contravention Code regarding the misdemeanor. In such conditions, we are witnessing a less harmonious combination of the legal norms in the matter, a fact that creates hard-to-decipher collisions between the norms of substantive law and the norms of formal law. In our view, this will lead to a huge desecration of criminal law institutions, and criminal science will regress from a higher form of development to a lower one. The differentiation between material criminal law and formal criminal law, which was made at the beginning of the 20th century by the distinguished criminalists of the time "… the criminal procedure law provides in what way and with what means it will proceed, under a formal report, for the fulfillment" of the operation of establishing the rule of law which should be applied to a particular case [2, p. 13]. In more recent doctrine it is argued that "… procedural rules determine the way in which the state applies criminal law by proving the existence of a crime and by holding accountable and punishing those guilty of their commission" [4, p. 13].

We also mention that the incorporation of substantive law norms into criminal procedural legislation seriously distorts the classical meaning of the principle of criminal legality. In accordance with the provisions of Art. 1 paragraph (1) of the Criminal Code: "The present Code is the only criminal law of the Republic of Moldova". From this principle-valued provision, it appears that only the regulations provided by the Criminal Code constitute substantive criminal rules. Therefore, pursuant to Art. 72 of the Constitution, *the constitutive source of criminal norms is formed by the Parliament of the Republic of Moldova*, and in accordance with art. 1 paragraph (1) of the Criminal Code, *the direct formal source of criminal rules is the Criminal Code of the Republic of Moldova*. Thus, on the one hand, the monopoly of the adoption of criminal laws belongs exclusively to the Parliament, and, on the other hand, the criminal norm must necessarily be incorporated into the Criminal Code.

The humanization of punitive criminal policy. Although, from the date of entry into force of the Criminal Code of the Republic of Moldova, numerous legislative measures were taken to reduce criminal penalties, along the way, the flow of laws amending the provisions of the criminal legislation with large sanctions, not based on the objective of reforming the punitive policy based on international and European practice, continued. For example, for the murder committed without aggravating circumstances provided by Art. 145 paragraph (1) of the Criminal Code of the

[2] In accordance with art. 8 paragraph (7) of the Criminal Procedure Code: "If necessary, the prosecutor who ordered and/or authorized the special investigative measure may request the investigating judge to authorize the investigator to commit one or more minor or less serious felonies or felonies under cover", and according to paragraph (9) "The simulated misdemeanor/crime can only be authorized in the case of the investigation of organized crime, corruption, related to corruption, terrorism, state security, money laundering and terrorist financing crimes".

Republic of Moldova, the legislator establishes the prison sentence from 10 to 15 years, and for the embezzlement of foreign property – Art. 191 paragraph (5) of the Criminal Code, if the value of the stolen property exceeds 100 average monthly wages per economy, established by the Government decision in force at the time of the act, the applicable penalty is imprisonment from 8 to 15 years. It follows that the legislator establishes an approximately identical sanctioning regime for the injury of two social values subject to criminal protection: the first is human life, and the second is the patrimony of natural or legal persons. It should be noted that the damage caused to the first social value is irrecoverable, and the second is recoverable, the criminal and procedural-criminal legislation having a sufficient arsenal of legal means, including coercion applicable in this sense.

Several studies and reports suggest that, despite many efforts and frequent changes to the law, there is still a lot of work to be done to decriminalize and humanize criminal law. In the same sense, it is mentioned that one of the most traditional tools for the humanization of criminal legislation is the reduction of the harshness of the sanctions and maintaining their proportionality according to the purpose pursued and the seriousness of the crime [5, p. 8].

In order to humanize the punitive policy of the state, to modernize and connect criminal sanctions to average European standards, we propose to the legislator two cumulative criteria to be used when establishing criminal sanctions. Based on the first criterion, the extent and intensity of criminal sanctions must be strictly proportional to *the importance of the social values damaged by committing a criminal act*. Based on the second criterion*, the criminal sanctions must be proportionate to the prejudicial act*, by taking into account all the signs by which the legislator characterizes its prejudicial nature. As a matter of fact, this last criterion is enshrined in Art. 49 paragraph (3) of the Charter of Fundamental Rights of the European Union, according to which *punishments must not be disproportionate to the crime*.

Conclusions. In the end, we mention that the basis of the sustainable development of the national criminal policy can be other conceptual benchmarks than those mentioned above, such as the clear delimitation between the rules of criminal law and those of contravention law, the strict observance of the criminal legislative technique in the formulation and placement of legal rules in the style of criminal law, etc. In viewpoint, we believe that taking into account the recorded benchmarks will have the effect of raising the level of democratization of the criminal law and, at the same time, will offer a luxury of clarity and predictability of the criminal norms that make it up, a fact that will essentially contribute to the efficiency of its application in the direction of social values protecting.

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THE PHENOMENON OF HUMAN TRAFFICKING FOR SEXUAL EXPLOITATION IN THE ONLINE SPACE

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Summary

The article discusses the impact of modern communication technologies, such as the internet, social networks, and mobile applications, on how organized criminal groups conduct human trafficking internationally. A detailed exploration of this topic reveals how the rapid expansion of information technologies has transformed and enhanced the effectiveness of criminal networks in exploiting victims through various methods, including sexual exploitation, forced labor, illegal organ harvesting, illegal adoptions, and forced marriages. Technology provides traffickers with multiple benefits such as anonymity, the ability to communicate in encrypted and real-time, access to a wide audience, geographical mobility, and remote control of victims.

Furthermore, traffickers have taken advantage of the expansion of e-commerce and legislative gaps in regulation and data protection to further expand their operations. The article highlights the need to adapt legislation and anti-trafficking measures to respond to the challenges posed by technological advancements.

Keywords: technology, trafficking, exploitation, organized groups, sexual, forced labor, e-commerce, anonymity, encryption, control, distance.

Introduction. Cybersecurity in the European Union is essential not only in the context of defending against conventional digital threats, but also in combating specific gender-based violence, such as online sexual exploitation. This study aims to explore the dynamics of cybersecurity in the EU, emphasizing the urgency of protecting women in this new arena of conflict. Contrary to the mistaken notion that slavery is a relic of the past, it persists in a modern form – human trafficking. This nefarious practice, the contemporary equivalent of slavery, constitutes a serious security issue, disproportionately affecting women. In this context, the EU Anti-Trafficking Directive requires member states to adopt specific measures to combat human trafficking, marking a crucial stage in the protection of women's rights [1]. The human trafficking industry, representing one of the most severe violations of human rights, generates estimated revenues of 117 billion dollars annually. Approximately 20 million people are caught in this network of exploitation worldwide, highlighting the global scale and profound impact of this scourge. The phenomenon of human trafficking is intrinsically complex, intersecting various areas such as political instability, violence against women, the international labor market, disparities in international economic relations, and particularly, the feminization of poverty [2]. This complexity is amplified by the abil-

ity of human trafficking to infiltrate the formal economy, influencing the gross domestic product and exploiting the vulnerabilities of the most marginalized members of society, especially women and children at or below the poverty threshold.

In this context, the COVID-19 pandemic has exacerbated the situation, increasing the risks associated with human trafficking through the amplification of transnational organized crime, including human trafficking activities. In the context of the 21st century, the digital era has transformed cyberspace into a favored terrain for various forms of crime, including human trafficking. This phenomenon raises a pressing question: if human trafficking is recognized as a crime disproportionately targeting women and children, why do the European Union's cybersecurity strategies not include specific measures to combat this type of gender-based violence?

Andrew Liaropoulos highlights a significant gap in current cybersecurity policies, arguing that they tend to neglect the protection of online users, focusing instead predominantly on national security [3]. This narrow approach overlooks the fact that cyberspace is not only a battlefield for state conflicts, but also an environment where serious crimes against vulnerable individuals are committed.

Furthermore, a group of experts from the Council of Europe analyzed the impact of new information technologies on human trafficking for sexual exploitation and confirmed an inextricable link between the sex industry and the internet, emphasizing the urgent need to address this issue in cybersecurity strategies.

Therefore, it is essential for the EU to review and enrich its cybersecurity strategy, integrating specific measures that effectively protect all users of cyberspace, with particular attention to the prevention and combat of human trafficking. This adaptation would not only respond to an acute need for human rights protection, but would also reflect a deep understanding of the interconnected nature of national security and individual security in the digital era.

The goal of this study is ambitious and multidimensional. It aims to assess the impact of technology on human trafficking, exploring in detail the modus operandi of traffickers in the digital age. The study focuses on identifying the operational and legal challenges faced by states and, to a certain extent, non-governmental organizations in their efforts to detect, investigate, and prosecute human trafficking facilitated by information and communication technologies. There is also a special emphasis on the processes of victim identification and on raising awareness among communities at risk.

Methods and materials applied. To develop this detailed analysis of sexual exploitation on the internet, our study integrated both qualitative and quantitative methods, facilitating a deep understanding and detailed examination of this issue. Among the main methods used are content analysis of online materials, observing user behavior on digital platforms, critically evaluating existing data, and deduction based on patterns identified in online behaviors. These approaches allowed us to identify trends, the modus operandi of traffickers, and to propose informed solutions for the prevention and combating of this phenomenon.

Discussions and results obtained. A crucial element of the study is the exploration of strategies, tools, and 'best practices' adopted by both states and various institutions to effectively address these challenges and to improve their response to the phenomenon of online human trafficking. The analysis reveals similarities and differences between the specific experiences of each country, providing valuable insight into international efforts to combat this issue.

A particularly emphasized aspect in the study is the importance of training. It is argued that investments in human capital development are essential and must go hand in hand with investments in technical solutions. By enhancing the skills and knowledge of those involved in combating human trafficking, the available technological tools can be exploited more effectively and the changing dynamics of this crime in the online environment can be more adequately addressed.

Modern communication technologies, such as the internet, social networks, and mobile applications, have radically transformed the ways in which organized criminal groups carry out human trafficking activities internationally. The rapid expansion of information technologies has significantly increased the effectiveness of these criminal networks in various forms of exploitation, including sexual, labor, illegal organ harvesting, illegal adoptions, and forced marriages.

The benefits offered by technology to traffickers are multiple and diverse. Anonymity, the ability to communicate in real time and in an encrypted manner, access to a vast audience of both potential victims and clients, geographic mobility, and remote control of victims are just a few of the technological advantages exploited. In addition, traffickers have taken advantage of the expansion of e-commerce and legislative gaps related to regulation and data protection to further expand their operations.

Technology plays a crucial role in every stage of sexual exploitation, from the recruitment of victims to their control through blackmail with compromising photos and videos. The financial management of criminal operations also benefits from the facilities offered by online platforms, allowing discreet and efficient management of illicit funds [8].

Modern technology provides traffickers with a significant advantage in their illegal activities, allowing the recruitment of victims without the need for a direct face-to-face meeting [6, pp. 1-13]. This mode of operation significantly reduces the risk of detection by law enforcement. Social networking platforms, such as Facebook, Instagram, and Twitter, along with dating apps like Tinder, are heavily exploited by traffickers. These serve as virtual catalogues, providing traffickers with the means to identify potential victims and to devise personalized approach strategies.

These platforms become potent tools for traffickers, allowing them to gather detailed information about users' psychological and personal environments. Information such as level of education, family connections, economic status, place of residence, and network of friends is often publicly accessible on these platforms, often accompanied by photographs. This unintended transparency transforms online environments into a fertile ground for traffickers' recruitment activities, offering them a profound insight into the lives of potential victims [9].

In the same context, traffickers exploit less visible layers of the internet, such as the Deep Web and Dark Web, to conduct illicit activities, including the sale of child sexual abuse material and other illegal niche transactions.

The Deep Web, also known as the invisible or hidden web, is the part of the internet that is not accessible through conventional search engines. While most of its content is legal and deals with the storage of private data, such as government databases, libraries, and medical records, certain areas of the Deep Web are used for illegal activities, including online sexual exploitation.

In the context of sexual exploitation, the Deep Web serves as a secure environment for criminals due to the increased anonymity and difficulty of being tracked by authorities. It allows for the organization and distribution of exploitative materials without immediate exposure to the risks associated with conventional online surveillance. For example, human traffickers can use the Deep Web to host and distribute abusive content, coordinate meetings, and conduct financial transactions, all hidden from the public eye and legal surveillance.

These illicit activities are often centered around black markets and specialized forums, which are protected by various layers of security, such as Tor networks, which encrypt internet traffic and complicate the physical localization of servers and users.

The Dark Web constitutes a specific portion of the Deep Web, characterized by a lack of regulation and limited accessibility [10]. It offers a concealed online space where criminal activities, including human trafficking, can be orchestrated far from the eyes of the law [4]. Accessing the dark web requires special software, such as Tor, which encrypts information and ensures the anonymity of site operators and users, making it extremely difficult to track the sources of messages

and transactions [7]. In this hidden environment, cryptocurrencies such as Bitcoin (public) and Monero (private) are used to ensure a high degree of user anonymity. While transactions with public cryptocurrencies can be traced with some effort, private cryptocurrencies are much harder to associate or track.

By using encryption software, users and their locations become anonymous, making the dark web an ideal online forum for traffickers, providing them an additional layer of protection against detection and tracking by authorities [11].

In the context of our study, one form of manipulation of victims or potential victims of online sexual exploitation is blackmail. Threats of blackmail to expose victims or their information on the Internet are extremely effective in maintaining the fear and silence of victims for years or throughout their lives. Human trafficking for the purpose of producing pornography often results in lifelong exploitation, as images are rarely removed from the Internet by victims, even after they have escaped the control of their traffickers, including in cases where their traffickers have been convicted.

The analysis of cases of human trafficking that include an online component within the member states of the European Union reveals that the majority of identified victims are adult women. This finding highlights an alarming trend of exploiting women in the digital environment. However, the vulnerability of minors, who constitute a particularly at-risk target group due to poor digital hygiene, should not be overlooked.

The online exploitation of minors is deeply concerning, given the easy access to a vast amount of information that can attract vulnerable children. This wide availability of data allows criminals to develop strategies with a minimal risk of being detected or failing. It is essential to recognize that technology, while offering numerous advantages for education and socialization, can also facilitate traffickers' access to potential victims by exploiting the specific vulnerabilities of these targeted groups.

In the digital age, traffickers have adapted and sophisticated their recruitment methods, resorting to online profiling of victims. In this context, two main methods of online recruitment can be distinguished: active and passive.

Active recruitment, comparable to the 'fishing with a hook' technique, involves direct and targeted efforts by criminals. They post false employment offers on recognized job portals and social media platforms. A concrete example is the use of classifieds sites, such as 999.md, where traffickers can present fictitious job opportunities abroad, attracting victims with the promise of well-paid and secure jobs [12].

In addition to direct tactics, trafficker networks also develop complex websites that mimic legitimate employment agencies. These sites are often actively promoted on social networks to increase their accessibility to a broader audience. Some of these criminals even go so far as to include live chat functions on their sites, offering an illusion of accessibility and immediate support from supposed employers or recruitment managers. These strategies enhance the mask of legitimacy and can more easily convince unsuspecting candidates to fall into their trap.

Besides active recruitment, the internet opens up the possibility for human traffickers to adopt a more passive approach. This method is significantly harder for law enforcement authorities to detect. Passive recruitment can be compared to ''fishing with a net'', where criminals scan the internet and social networks to identify and respond to ads posted by people looking for job opportunities abroad. This technique allows traffickers to expand their network and attract a larger number of victims without requiring direct or immediate effort [13].

Traffickers often begin the recruitment process by initiating an apparently harmless conversation, which quickly turns into a request for payment from the victims. They promise a job abroad and offer assistance with travel arrangements, asking for a fee for their services. The real-

ity of the situation only becomes apparent when the victims arrive in the destination country and discover the deception.

The importance of modern technology in the operations of human traffickers cannot be underestimated. Currently, control over victims no longer requires the physical presence of the traffickers. If in the past, physical violence and movement restrictions predominated, now control is also exerted through digital means. Forms of blackmail, including the threat of online distribution of compromising materials such as photos and videos of sexual acts, are common practices. Traffickers also use technologies such as GPS and video cameras embedded in mobile devices to monitor and virtually restrict the movements of the victims.

Traffickers take advantage of the accessibility and efficiency of technology to disseminate images of the sexual exploitation of victims. These materials, including advertisements, videos, and photographs, are often posted on pornography sites or platforms that promote sexual services. With just a simple smartphone, traffickers can film and upload explicit content, benefiting from low costs and minimal risks while achieving significant profits.

Moreover, the sexual abuse of adults and children can be streamed live to subscribers who pay periodic fees or one-time payments, sometimes even on popular pornography sites. This practice not only generates direct revenue from consumers of such materials but also amplifies the suffering of the victims through their continuous exposure.

Using the physical image of the victim for blackmail is another concerning tactic. Traffickers threaten to broadly disseminate these images online or to selectively expose them to the families and communities of the victims, leading to possible situations of disownment or stigmatization by these groups. In some contexts, victims are even threatened with violence or exclusion from their community, as a result of cultural perceptions regarding ''dishonor''.

Exploitation of individuals in the digital age has eliminated the need for a fixed physical location for victims, thus complicating the efforts of authorities to identify and intervene. The use of the internet has transformed how clients access victims, allowing them to ''order'' and receive them directly, without requiring a set meeting point. This digitally-facilitated mobility allows traffickers to easily move victims between cities and even countries, simply by updating the details in online ads.

Constant mobility increases the confusion and dependence of victims on exploiters, amplifying their isolation and the difficulties of adapting to rapidly changing environments. Short stays in different locations further complicate the situation, creating significant barriers for authorities trying to detect, intervene, and provide protection to these victims. This reality underscores the critical need to adapt and improve methodologies to combat human trafficking in order to keep pace with technological advancements that facilitate this form of exploitation.

However, given the severity of child abuse, including child pornography and trafficking of minors, it is crucial to pay increased attention to these issues, especially in the context of significant developments in the socio-technical field. Recent innovations attempt to counteract the exploitation of this vulnerable group of victims. It is important to emphasize that girls are often specifically targeted by these crimes, facing a higher risk of being transported under unsafe conditions, exploited through forced labor, abused by smugglers, raped, and sexually exploited.

These realities have stimulated a focus on two main research directions:

1. Exploring the complex relationship between forced labor and gender-based violence;

2. Assessing the profound impact of technological advances on how sexual exploitation crimes are becoming increasingly sophisticated. In this context, reference is made to the use of ''cybersex'' in human trafficking and the ''information and communication technologies'' that facilitate sexual exploitation.

In light of new trends observed in human trafficking, well-defined actions have been under-

taken to combat and prevent this serious crime, based on a series of recently proposed legislative changes. In December 2022, the European Commission presented a proposal to reform Directive 2011/36/EU, a significant step in adapting legislation to current trends and the increased complexity of human trafficking. This initiative is based on detailed findings presented in a series of reports, from the first to the fourth, covering the period from 2016-2022.

One of the main proposed changes is the expansion of the definition of human trafficking. These changes target forced marriage and illegal adoption, which are included among various purposes of exploitation in accordance with Article 2 paragraph (3) of the directive. The incidence of these forms of trafficking is not high (sexual exploitation and forced labor are consistently predominant) and has not been reflected in the statistics presented. Member States interpret the purposes of exploitation too narrowly, which is consequently reflected in their transpositions. Such an expansion of criminalization cannot be objected to.

Another proposal would be the criminalization of human trafficking if the crime is committed online. According to the new Article 2a, the definition of human trafficking is intended to include any act committed for this purpose through information and communication technologies. As mentioned, all stages of human trafficking are now significantly committed online, particularly, through electronic communications. The aforementioned amendment aims to ensure, from a substantive point of view, that any such behavior also constitutes a crime.

However, we believe that the change in substantive criminal law is only part of the solution. The fact that something is officially established as a crime does not mean that such conduct will not be committed and the problem is solved.

The shift of human trafficking crimes to the online sphere requires advanced technical and procedural solutions. We believe that an effective tool could be acquiring knowledge about the content of electronic communications and their metadata, including the possibility of applying automated analysis of electronic communications. Automated analysis of electronic communications is the mass monitoring (interception) of communications using technical tools - algorithms capable of detecting certain patterns of communications that indicate possible criminal behavior. Mandatory application of automated analysis of electronic communications in certain circumstances (threats to national security) is permitted by the jurisprudence of the EU Court of Justice, as well as (with more flexible conditions) by the European Court of Human Rights.

Currently, automated analysis can be applied (by electronic communication service providers) optionally in detecting and investigating sexual abuse under Regulation 2021/1232 on the temporary derogation from certain provisions of Directive 2002/58/EC for the purpose of combating online sexual abuse of children. This specific legislation applies until the adoption of the General Regulation on the respect for private life and the protection of personal data in electronic communications. Automated analysis must be subject to strict confidentiality and informational self-determination guarantees. Given that human traffickers have begun to use the internet and social networks to a much greater extent, we believe that the scope of this regulation should be extended to human trafficking [14].

Automated analysis of electronic communications could be applied to identify electronic communications that occur at all stages of the trafficking process, from soliciting victims (grooming), managing remote transactions, offering victims to potential clients, as well as communicating with clients. Some Member States apply ''undercover surveillance, internet surveillance'', but these procedures should be at least partially unified throughout the EU, given the regulation of electronic communications. Based on the above, we do not consider that limiting the new Article 2a only to the domain of substantive law is a sufficient solution for committing human trafficking in the online sphere.

Conclusions and recommendations. The internet and information and communication

technologies have a profound impact on our daily lives, and the Covid-19 pandemic has emphasized the essential role they play in various activities and social interactions, accelerating their relevance. This is also true in the context of crime, including human trafficking. Technology brings both challenges and opportunities for legislation, but information on internet and technology-facilitated human trafficking is still limited and disparate.

So far, the most consistent information comes from a limited number of studies, which often rely on a small number of sources, frequently conducted within a limited range of countries. These sources are supplemented by sporadic reports from international organizations.

In addition to providing a systematic assessment of the current evidence base, this study also aims to offer a tool for conducting future evaluations and for monitoring technological and behavioral changes. This allows us to generate the following recommendations:

– The process for mutual legal assistance requests between states should be simplified by clarifying procedures, increasing the use of enhanced contact networks, and clearly establishing requirements for cooperation from the start. Countries must ensure that staff is adequately trained to process information and other international instruments. Also, common cooperation models that are accepted should be developed to facilitate communication, reduce administrative burdens, and minimize errors in requests.

– Law enforcement agencies should invest in developing capacities for internet monitoring, cyber patrols, undercover online investigations, the use of OSINT by specialized officers, social network analysis, and the use of automated search tools for evidence analysis. The development of these tools must respect the principles of the rule of law and consider adapting existing legislation to allow for cyber patrols and covert online investigations, taking into account their ethical implications.

– Countries and international organizations should regularly conduct strategic analyses to identify emerging trends in criminal *modi operandi* and to stay updated with the rapidly changing behavior patterns of technology users. Based on this information, countries can launch specific police operations, establish cooperation agreements, and design awareness campaigns. Information should be disseminated regularly at both national and supranational levels.

– Revisions should be proposed to Article 165 of the Criminal Code of the Republic of Moldova as well as to Article 210 of the Criminal Code of Romania to include recruitment and exploitation methods through information technologies, so that the legislation remains relevant in the face of technological developments.

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THE MONEY LAUNDERING "INDUSTRY". HOW CAN IT BE COUNTERED?

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Summary

In the current context marked by globalization and, implicitly, by multiple challenges to international security, organized crime has seen an unprecedented evolution and tends to become more and more dangerous, managing to extract huge sums of money from the world economic circuit through activities characteristics such as drug trafficking, illegal migration, arms trafficking, contraband of all kinds, so that, later, in the process of laundering the money thus obtained, to ensure their legal status.

Therefore, with the ability to use sound business strategies, which include diversification of activity and exploitation of new markets, the term "organized crime" tends to be replaced by that of "criminal industry". And in this "industry", criminal groups/organizations use increasingly sophisticated methods to obtain maximum profit, and exploit situations where the authority and resources of the state are weakened or vulnerable.

What can states do, together, not separately? Starting from the international legal provisions, the careful, permanent, integrated, and inter-institutional monitoring of the activities carried out within this "industry" can provide the authorities of the states involved in combating criminal activities without borders the key to solving as many inter-institutional operations as possible.

It is more than necessary the concerted action of the authorities within unitary programs at regional and international level, aimed at including, redirecting the means at their disposal in terms of organization and material, with a focus on combating money laundering, at the expense of separate approaches regarding to organized crime and, why not, to terrorism.

Keywords: money laundering, globalization, organized crime, combating criminal activities, inter-institutional cooperation.

Introduction. The phenomenon of globalization refers not only, or not primarily, to economic interdependence, but to the transformation of time and space in which we live. Distant events, economic or otherwise, affect us much more directly and immediately than before. And conversely, the decisions we make as individuals are often global in their implications.

In addition, the shape of the nation-state is changing, the shape of borders is changing through flexibility and permeability, globalization carving outside paths and creating new economic, even cultural regions that break the borders of nation states. It could be one of the advantages of the "era" of globalization, in which trade, freedom of movement and the flow of capital are encouraged between states that have, by themselves, these possibilities and those that aspire to break down political and economic barriers.

But we largely focus our attention on the downsides of this "era" for a very simple reason. They have an extremely negative impact on states and, by implication, on their citizens, and building a defensive system against them is an increasingly difficult and complex undertaking.

The phenomenon of money laundering – a destructive "industry" in continuous development. Obviously, in this context marked by multiple challenges to international security, or-

ganized crime has experienced an unprecedented evolution and tends to become more and more dangerous, managing to extract huge sums of money from the global economic circuit through characteristic activities such as trafficking of drugs, illegal migration, arms trafficking, contraband of all kinds, so that later, in the money laundering process, they can ensure their legal status.

We identify four factors that had a considerable impact on the development and evolution of organized crime at the beginning of the 21st century:

a) *the permeability of the borders* – which facilitated the access of criminal groups and contributed to the emergence of cooperation between them on large areas, against the background of the weakness and state institutions capable of controlling borders. Obviously, in the current context existing on the European continent, marked by challenges related to the increase in mixed migration flows, but, above all, by the increased security concerns, the European Union is forced to adapt to them, regulating a common management policy of external borders, information exchange systems and databases that contribute to ensuring international security, concrete procedures and measures for monitoring and evaluating any activities specific to cross-border crime, or subsequent to this phenomenon [1].

b) *population movements* – against the background of lax immigration policies of some countries, especially from an economic point of view, individuals belonging to criminal groups can obtain international refugee status or can use illegal immigration/emigration routes to expand their activities and establishing new networks in host countries). Being an extremely serious challenge, because of the constant pressure of migratory flows, it is expected that the intensification of mutually beneficial partnerships and cooperation with the countries of origin and transit will activate the progressive implementation of the measures necessary to achieve a high level of border security [2].

c) *commercial and financial-banking development* – for those involved in illegal activities, these processes of global transformation and unprecedented development of economic exchanges offer an environment conducive to the commercialization of counterfeit products, or the "patenting" of financial fraud schemes, without certain possibilities of control or detection of this phenomenon. That is why, despite the inherent innovation and adaptability, integrated responses and articulated solutions are sought and identified, which ensure the interoperability and improvement of the inter-institutional cooperation so necessary in the management of the activities and resources targeted at the partnership level [3].

d) *the development of communications and related technologies* – is and will be exploited by criminal groups as a resource, facilitating the creation of the structure of criminal networks by simplifying communication between group members, in particular. Thus, the expansion and internationalization of the prospects for the use of the latest technologies by such networks require a proactive approach on the dimension of inter-institutional cooperation between allied and partner states, being the most appropriate response in preventing and countering offensive operations coordinated by entities allied to the interests of some state actors.

In the context of globalization, the phenomenon of money laundering [4] offers the advantages of some transfers of funds, without being limited by the barriers of the borders of the states of the world. To the same extent, these advantages are speculated by organized crime groups in the process of money laundering, to erase the traces of the illegal activities that generated them.

At the same time, the phenomenon of money laundering is a complex activity, carefully elaborated, which negatively and often deeply affects the world of business, the global or regional economy, the development of states, in general, being necessarily associated with the corruption process at the level of higher-ranking officials. By laundering money, criminal groups pursue two major objectives, namely erasing traces that can lead the authorities to the illegal activities that generated them and avoiding losses through confiscation in the fight with the authorities, which implicitly ensures the closure of the criminal cycle, criminal activity that generates money black

money, laundering black money, investing it in legal activities, generating "clean money", financially supporting and even developing criminal activities.

From a historical point of view, money laundering gained the dimensions of a phenomenon in the first decades of the last century, when mafia groups operating mainly in the United States, obtaining huge amounts of cash from extortion, prostitution, and smuggling, had to protect existence by hiding the traces of their deeds. In this context, organized crime groups, benefiting from the support of specialists in the field of finance-banks, began to develop a real network of money-laundering machines that over time reached almost perfection [5, p.4, p.59, p.182].

Following this path, money laundering has become a particularly complex operation, an activity specific to white-collar criminals, characterized by the following main features: transnational character, high flexibility, ability to adapt to the emergence of disruptive factors, high specialization, ingenuity, technicality, and financing at the highest levels.

How can money laundering be countered? The need to combat the phenomenon of money laundering is imposed by several elements, which, in the end, relate to the size and consequences it generates worldwide, it is estimated that annually the funds introduced in the money laundering process exceed the exorbitant amount. Thus, it increases the phenomenon of high-level corruption, ensures the continuation and development of criminal activities generating black money, disrupts economic activities and financial banking systems at the local and regional level and, finally, ensures the financing of international terrorism.

Considering the aspects that define money laundering in its complexity, combating this phenomenon, which, in an organized manner at the global level, only started at the beginning of the 80s, requires sustained international cooperation.

In initiating the process of combating money laundering, it is necessary to start from the fact that the main purpose of criminal groups in carrying out specific activities is to obtain a profit that will later ensure their well-being and the continuation of their business. For this, dirty money resulting from criminal activities must be laundered, which will ensure the erasure of traces of illegal origin, the main "care" of criminals.

Identifying the weak points of the money laundering process that constitute vulnerabilities for its operators, which can later lead to the unmasking of the criminal activities that generated them, is the key to the process of combating money laundering. Of all the steps in the money laundering process, the one aimed at placing dirty money into the legal financial system appears to present the greatest vulnerabilities.

Worldwide statistical data highlight the fact that drug trafficking is the most important source of illicit income, being the business that produces huge amounts of cash [6, p.16]. The manipulation of these amounts of money with a view to laundering induces a series of vulnerabilities. The stages, the most exposed being the introduction of cash money into the financial system, the transport of cash money across the border to capitalize on the facilities offered by the financial systems of certain countries, the transfer of cash money into and from established financial systems.

It is obvious that this type of activity cannot be carried out without the complicity of some officials from the banking system, the customs system, etc., attracting them to collaborate in an organized manner, corruption being present as in most cases where the imprint of organized crime intervenes.

Close monitoring of these vulnerability-generating stages can provide authorities with the key to solving money laundering cases, as well as guidance on the business of organized crime groups that generate black money. Once introduced into the legal financial system, black money follows the cycle of the laundering process, the complex and multiple operations in which it is used, primarily aimed at erasing traces that could reveal its true provenance. The identification of these operations is particularly difficult, as they are carried out in apparent legality with the com-

plicity of some specialists in the financial-banking field or in that of businesses in a certain field.

However, practice has demonstrated the existence of tools commonly used in carrying out the respective activities, whose careful monitoring by the authorities, supported by the activity in the field of information gathering and cooperation in an institutionalized framework, can lead to the identification of cracks and unmasking those operations [7, p.252-253].

One of the most useful and implicitly used tools in the hands of those involved in money laundering is banks, practice proving that a bank is the best cover for this kind of activity, according to the principle if you want to steal safely, then buy a bank. In this context, the monitoring of banks' activity becomes a necessity to be able to detect in time those operations that hide stages of the money laundering process behind them.

It should be noted that money laundering becomes relatively easy when certain banking institutions and some of their key officials cooperate with criminal groups. For these reasons, at the international level, a series of structures with national representation were created to ensure the cleaning of financial and banking systems from those ticks that facilitate money laundering operations.

In addition to this particularly useful tool for those engaged in money laundering, we mention that those interested in carrying out this type of activity are currency exchange offices, casinos, companies that sell jewellery or art objects, gaming and betting rooms, express courier services, etc. The activities carried out within these objectives through a careful and subtle monitoring carried out especially in an informative plan, can lead to important results in the line of combating money laundering.

Despite the special interest shown by the international community in combating money laundering and the complex of measures adopted in this line, criminal groups continue to recycle their income obtained from illegal activities, using a wide range of means and tactics aimed at annihilating the measures adopted by authorities against them. Also, along these lines, criminal groups capitalize on the advantages offered by the globalization of fund transfers made through Internet services, constituting the most representative example in this regard.

The speculation of some situations of relative, socio-political instability in certain regions of the globe offers the opportunity for organized crime groups to extend their control over some banks, particularly important facilities for those involved in money laundering.

As can be seen, the process of money laundering is a complex and specialized group activity, carried out in a long-term, continuous form, using means and tactics that exceed the borders of a single country. In the cycle of activities carried out by criminal groups, whether it is drug trafficking, illegal migration, arms trafficking or smuggling, money laundering is the engine that ensures the refinancing of those activities or other collateral activities, the most important of which, by consequences and dimensions it is international terrorism. In these conditions, combating money laundering has become a priority for most states of the world, success in these efforts implicitly ensuring the reduction of drug trafficking, arms trafficking, the reduction of activities specific to illegal migration, as well as smuggling of any kind, at the same time being decisively affected the actions of some terrorist groups [8, p.37].

The failure of the fight against money laundering determines the materialization of some major risks in the dispute with organized crime, among which we mention the continuation and development through refinancing of the activities carried out by criminal groups, the encouragement of the emergence of new criminal groups through the power of example, the disruption of financial banking systems at the level national and regional, affecting national economic systems and democracy as a whole, the proliferation of international terrorism, etc.

Considering the aspects presented, the fight against money laundering stands out as a pressing necessity of the current moment, the gathering of information and international cooperation being the basic requirements for the development of this process [9, p.17]. Considering the impli-

cations of money laundering on the continued existence of certain activities specific to organized crime, as well as on the materialization of terrorist threats, blocking their financing circuits can, with certainty, constitute a way with a high degree of efficiency in combating them.

Reducing the flow of cash must be a priority in the fight against organized criminal groups, meaning that addressing the phenomenon of money laundering in terms of causality and the effects it generates can be a reaction to the scale of these criminal phenomena proven over time. And this is because the ineffective reactions of state institutions in the face of the aggravation of economic crime, corruption, or poor administration of public resources can lead to the vulnerability of the internal situation from an economic, financial, and social perspective-[10, p.71].

It is more than necessary the concerted action of the authorities within unitary programs at the regional and international level [11, p.50], aimed at including, redirecting the means at their disposal in terms of organization and material, with a focus on combating money laundering, at the expense of some approaches separate on organized crime and terrorism. Together, not separately, consistent results can be achieved in these directions.

Conclusions. Summarizing, the phenomenon of money laundering and financial speculation, which find a fertile environment in fragile economies, the material benefits obtained from them and drug trafficking, are often used in the sponsorship, by extension, of terrorist activities and the acquisition of cutting-edge technology.

The "weak link" in the new organization of criminal groups of any type is, in fact, related to the design of short-, medium- and long-term goals. The skills in quickly detecting and exploiting any economic, political, social, or technological dysfunctions almost simultaneously with their appearance at the local, national, and international level make it impossible to search for new innovative ways to achieve short, medium and long-term goals and objectives. Thus, the mission of the agencies and empowered security structures becomes very difficult.

The structure and nature of criminal activity has changed in the new millennium. The changing trends indicate that we can no longer study and act separately to counter the actions of organized crime, with "innovations" being reproduced and actions copied and refined. In addition, criminal groups can exploit situations where the authority and resources of the state are weakened and thus vulnerable to subversion. In other words, at the state level, we can talk about the limits of its capacity for reaction and prevention, related to the insufficiency of knowledge, ineffective organization, and low speed of reaction. But, in this context, an extremely important aspect should not be lost sight of, namely the one according to which the state has at hand the advantage of harmonizing and making domestic normative acts compatible with European and international regulations.

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RELIABILITY OF DIGITAL EVIDENCE IN CRIMINAL PROCEEDINGS: VERIFICATION PROBLEMS

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Summary

The article discusses the problems of recognizing digital information as procedural sources of evidence in criminal proceedings. The features of the assessment of digital evidence according to the criterion of reliability are shown, the need for proper recording of digital evidence at different stages of criminal proceedings is substantiated. It has been proven that the metadata of digital files at any stage of criminal proceedings can confirm their authenticity and procedural significance.

The study showed that the courts of Ukraine and the United States make opposite decisions on the recognition of information in digital form as procedural sources of evidence, and the level of training of investigators in working with software and hardware complexes and complex software shells is low. It is proposed to supplement the training and advanced training programs for law enforcement officers with basic training in working with digital evidence using modern developments of law enforcement agencies, scientists and journalists from Europe and the United States.

The author analyzes the normative legal acts of Ukraine and the United States and the recommendations adopted by various EU and US institutions regarding the use of digital evidence in criminal proceedings and the recognition of them as procedural sources of evidence. At the legislative level in Ukraine, it is proposed to fix the verification procedure and criteria for the reliability of digital information.

Keywords: digital information, digital evidence, authentication of digital information, verification of digital information, reliability of digital evidence, criminal proceedings.

Introduction. Today, there are several digital databases in Ukraine and other countries to record crimes committed by the Russian military in Ukraine. In particular, the database «The Book of Executioners of the Ukrainian People» [1], the information resource of the Ukrainian Helsinki Human Rights Union [2], the T4P (Tribunal for Putin) database [3], the national WarCrimes.gov.ua platform, the analytical database «War Criminals of the Russian Federation» [4], the International Centralized Database of Evidence of International Crimes (CICED) [5], etc. However, the digital information gathered in databases cannot always be used in criminal proceedings as evidence, even in cases where it records the fact of committing a crime.

Based on the results of the generalization of more than 50 resolutions and decisions of courts of different jurisdictions of Ukraine and the United States, it was established that there are problems in recognizing information in digital form as sources of evidence. Even under the same conditions, judges make opposite decisions. In some cases, they recognize copies of digital recordings as admissible evidence, in others as inadmissible [6, p. 135]. This has a negative impact on the quality of the administration of justice because, in the context of the global digitalization of society, digital evidence is sometimes decisive for the objective resolution of the case and bringing the perpetrators to justice. Therefore, it is extremely important to study the problems of recog-

nizing digital information as sources of evidence in criminal proceedings and determining ways to overcome them.

Discussions and results obtained. Digital information can serve as evidences in criminal proceedings only if it meets the criteria for evaluating evidences (admissibility, relevance, reliability and sufficiency).

The admissibility of evidence is determined by the legality of the source of origin and the method of obtaining. Propriety reflects the ability of evidence to confirm or refute any circumstances relevant to the case. Evidence that reflects his ability to confirm or refute the circumstances relevant to the case is sufficient. Evidence is considered reliable if it is true.

It is important to note that the evaluation of digital evidence has its own peculiarities. In some cases, there are difficulties even in attributing them to material evidence or documents.

The Criminal Procedure Code of Ukraine (CPC) does not contain provisions on electronic (digital) evidence, and information in digital form is referred to documents (electronic documents) as procedural sources of evidence (Part 2 of Article 84) [7]. The Criminal Procedure Code of Ukraine does not contain a list of information that must be recorded in the protocol of investigative action and its annexes. Poor-quality and incomplete recording of digital information in the future may lead to its non-recognition as evidence in criminal proceedings. In the CCP Ukraine does not have any regulations on the use of information from "open" sources of the Internet in criminal proceedings. Documents as digital evidence include not only text documents (e-mails and messages), graphics, photographs, audio and video recordings, but also computer programs and databases. They differ not only in form and content, but also in their source of origin. Some of the documents are created by a person, others arise as a result of the operation of electronic devices and systems and do not depend on human actions (information from navigation and monitoring systems, electronic digital signature, information from mobile operators, network technological information, etc.) [6, p. 132].

The international organization Global Rights Compliance has published the "Basic investigative standards manual for documenting international crimes in Ukraine" [8], which contains information on the basic regulations of investigation, preparation for documentation, work with various types of evidence (physical, documentary, digital, audiovisual and information from open sources). The publication provides a description and a detailed procedure for recording the following types of information in digital form: photographic or video information, in particular, obtained during the inspection of the scene; information extracted from an electronic device (such as a phone, laptop, or camera); information found at the crime scene or belonging to a deceased victim or probable suspect; information received from third parties (for example, witnesses), etc.

Through the joint efforts of leading scientific institutions and law enforcement agencies of the United States, Canada and some European countries, the international organization "International Organization on Computer Evidence" (IOCE) [9] and the "Scientific Working Group on Digital Evidence" (SWGDE) [10] were created, which research digital information and develop interdisciplinary manuals and standards for recording, restoring, preserving and researching digital evidence. Particular attention is paid to the procedural recording of investigative actions using digital evidence, ensuring access to them for all participants in the process in adversarial proceedings, admitting only qualified IT specialists to the study of digital evidence in order to preserve their integrity as much as possible [11].

In the United States, courts establish the authenticity (authenticity, reliability) of digital evidence in accordance with FRE Rule 901 USA according to the following system: verification of the fact of receiving of digital information from a particular electronic device, establishment of full accordance with the original or with the first procedurally recorded copy, establishment of the absence of changes from the moment of their fixation [12]. To verify the authenticity of a large array of digital data, a complete copy of the data of an electronic device is used, which preserves the

logical structure of the information storage device (including deleted files) and which is made by a specially engaged forensic expert or specialist. The presence of such a copy (disk image) makes it possible to conduct a forensic examination in the future (including additional or repeated).

The authenticity of a digital file or group of files is verified by its hash code (a unique code for each such object). The same values of the hash code for the original file (in particular, obtained from an exact copy of the device's information storage) and the file being checked indicate their identity [13]. To compare files by hash code, a forensic expert or IT specialist is involved, and the reliability of the testimony or expert conclusions is checked by Daubert standard (FRE USA Rule 702).

Scientists of the US National Institute of Justice emphasize the importance of detailed recording of authentication processes (authentication) and all other procedural actions with digital evidence (seizure with a detailed description of an electronic device, an indication of its owner and persons who had access to it, ways and means of extracting information, copying to an external medium, research with a description of methods and means, etc.). This allows you to prove the fact of storing information in its original form [14, p. 13].

In 2020, the Center for Human Rights at the University of California, Berkeley, and the Office of the United Nations High Commissioner for Human Rights presented the Berkeley Protocol on Digital Open Source Investigations, which contains standards and methodological approaches to collecting, storing and analyzing information in the public domain that can serve as evidence in criminal proceedings. [15, p. 6]. The Berkeley Protocol sets out algorithms for searching, accumulating, analyzing, and storing digital information from open sources in compliance with the principles of objectivity, competence, accountability, compliance with legislation, security, accuracy, independence, transparency, respect for human rights, etc.

The National Standard of Ukraine DSTU ISO/IEC 27037:2017 [16] is the only official document in Ukraine that deals with digital evidence. It sets out guidelines for the identification, collection, acquisition, and preservation of digital evidence, but these recommendations are not yet enshrined in law.

To assist in assessing the admissibility, propriety and reliability of digital evidence, investigators and judges usually turn to forensic experts, however, even they are not always able to solve the problem of establishing the authenticity of video and sound recording materials, which is usually based on the identification of recording equipment. On this equipment, an experimental recording is carried out, the characteristics of which are compared with the characteristics of the analyzed file. In the absence of recording equipment, to establish authenticity recording is extremely difficult [17]. Experts state that due to the rapid development of information technology and the change in digital file formats, the existing methods of forensic computer and technical examination are quickly "outdated" and require constant revision [18, p. 5]. They emphasize that at present it is generally difficult to create a specific methodology for authentication of digital video and sound recordings due to their diversity and the lack of scientific publications on their characteristics. Because of this, it is only possible to characterize the directions of detection of certain signs to solve the issue of authentication (verification) of digital records [19, p. 57-58].

The European Journalism Centre has published a manual for verification (verification of authenticity) of digital content (photographs and videos), which contains step-by-step instructions for establishing the authenticity of digital images and videos received from individuals or detected in open sources on the Internet [20]. Forensic experts in their work (including when creating expert methods) can use the best practices of international communities of journalists to combat disinformation.

The website of the international community of investigative journalists Bellingcat, which specializes in the verification of digital information from open sources (OSINT), has published manuals on verifying digital information from open sources and establishing certain facts using

them. Quite interesting are the publications on the use of sunlight and shadow in photographs to establish geolocation, the method of tracking aircraft flights, etc. [21].

It is recommended to start verifying the authenticity of digital images and videos in digital information verification manuals by checking EXIF (Exchangeable Image File Format) data, which is metadata that is "embedded" in digital files and may include the date and time of shooting, location of shooting, camera type, etc. To manually check the metadata, it is recommended that you open the image or video in a metadata viewer (e.g., Adobe Photoshop, ExifTool, etc.), check various metadata fields (author, date of creation, camera, geographic coordinates, etc.) and compare this data with known facts, sources, etc.. There are also free online tools (Jeffrey's Exif Viewer or Metapicz) that allow you to upload an image and view its metadata (camera model, lens type, shutter speed, aperture, file creation date, geographic coordinates, etc.) [22].

Unfortunately, verifying a file's metadata cannot guarantee its authenticity because there are ways to modify it. In particular, you can add and edit metadata using Adobe Lightroom, Capture One, Jeffrey's Exif Viewer, Findexif.com [20, p. 40], GroupDocs.Metadata [23] and applications for editing photos on a smartphone [24]. To do this, you just need to open the photo in the editing program, click on the "Metadata" or "Image Information" tab, and enter the required information. On Windows 10, you can add metadata to images, by right-clicking on the file, selecting "Properties" and then going to the "Details" tab [25].

The resources of the Foto Forensics website allow you to identify areas of editing in photographs (removing individual elements of the image or adding them). Special search services Google Search by Image and TinEye allow you to find the original source of the image and check where it was previously published [24].

The JPEGSnoop program, which works only on the Windows operating system, allows you to view metadata not only in images, but also in AVI, DNG, PDF, and other formats. It also helps to detect editable fragments of files [20].

Recently, judges have been trying to increase their level of awareness of the technical characteristics of digital evidence to avoid judicial errors. They show awareness in the evaluation of digital evidence and note that "the issues of identifying an electronic document as an original can be resolved by the authorized person who created it (with the help of special programs to calculate the checksum of a file or directory with files – CRC-sum, hash-sum), or, if there are appropriate grounds, by conducting special research" [26].

Scholars in the field of criminal law sciences believe that today we can talk about a low level of training of investigators to work with software and hardware complexes and complex software shells. In this regard, the involvement of a specialist when working with "digital evidence" is mandatory, since the slightest unqualified action can lead to the loss of important evidentiary or orienting information [27, p. 135]. Insufficient level of knowledge can lead to damage to digital information or its irretrievable loss.

In order to prevent investigative errors when working with digital evidence, the US Police Academies have added training material to the training (retraining) program for police officers, which includes algorithms for recording procedural actions using digital information and a list of issues that should be covered in the protocols of procedural actions [28; 29].

The authors of the guidelines for working with digital evidence pay special attention to the following issues:

– the need for continuous professional development of investigators and prosecutors on the technical aspects of digital evidence [29, p. 23];

– providing recommendations for verifying the authenticity of e-mails [29, p. 31];

– verification of the authenticity of printouts of information from a computer, explanation of the concepts of "original", "copy" and "duplicate" of digital information [29, p. 33];

– algorithm for establishing the authenticity of digital photographs, etc. [29, p. 50].

Conclusions. The use of digital evidence in criminal proceedings is a powerful tool for improving the quality and efficiency of crime investigations. Documentation of investigative actions and recording of evidence is accompanied by digital photography, audio and video recording, and the metadata of digital files at any stage of criminal proceedings allow to confirm their authenticity and procedural significance.

Information from open sources is mainly used by law enforcement agencies as a guide and helps to draw up an investigation plan and build investigative and judicial versions. If such information meets the criteria for evaluating evidence, it can serve as a procedural source of evidence to establish the facts of crimes, help identify criminals and victims, search for missing persons, etc.

To assist in assessing the admissibility, propriety and reliability of digital evidence, investigators and judges usually turn to forensic experts, however, even they are not always able to solve the problem of establishing the authenticity of video and sound recordings, because due to the rapid development of information technology, the existing methods of forensic computer and technical examination quickly become "outdated" and require constant revision.

Програми підготовки і підвищення кваліфікації співробітників правозастосовних органів слід доповнити базовою підготовкою щодо роботи з цифровими доказами із використанням сучасних напрацювань науковців і журналістів країн Європи та США.

Training and advanced training programs for law enforcement officers should be supplemented with basic training in working with digital evidence using modern developments of police officers, scientists and journalists from Europe and the United States.

To date, Ukraine has not yet developed a unified approach to determining the reliability of digital evidence seized both from physical media and from the Internet. There is an urgent need to resolve this issue both at the legislative level and through the development of methodological recommendations for law enforcement officers regarding the fixation and authentication of digital information using modern developments of scientists and journalists of international communities.

The Criminal Procedure Code of Ukraine should be amended to define the concept of digital evidence and its procedural media, the detailed procedure for seizing digital information, its review, recording and storing digital evidence. The algorithm for verifying (establishing the reliability) of digital evidence should also be enshrined in legislation.

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SOME CHARACTERISTICS OF ORGANIZED CRIMINALITY (CASE OF THE REPUBLIC OF MOLDOVA)

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Summary

Organized crime represents one of the most serious threats to national and international security, and the Republic of Moldova is no exception. This article explores some peculiarities of organized crime in the context of the Republic of Moldova, highlighting aspects such as types of criminal activities, organized structures, operating methods, and impact on society. Organized crime in the Republic of Moldova manifests itself in various forms, including drug trafficking, human trafficking, smuggling, money laundering, fraud, and corruption. Organized criminal groups operate in complex networks, with strong leaders and members specialized in different criminal activities.

One distinctive aspect of organized crime in the Republic of Moldova is the close link between politics and criminality. Criminal groups are often involved in high-level corruption, using influence and resources to consolidate their power and control over various sectors of the economy and society.

The impact of organized crime on the Republic of Moldova is profound, affecting social and economic stability, undermining trust in public institutions, and weakening the rule of law. Moreover, there are connections between organized crime in the Republic of Moldova and international networks, expanding the sphere of influence and threatening regional and global security.

To counter this threat, the Republic of Moldova must take effective actions at both national and international levels, including strengthening law enforcement institutions, enhancing the capacity for investigation and prosecution of criminals, international cooperation, and promoting transparency and accountability in public administration.

Keywords: organized crime, social phenomenon, public security, latent, organized criminal group.

Introduction. The experience of public life in our country in recent years has forced the recognition of the existence of organized crime. Thus, appreciating the state of general crime in the Republic of Moldova, one of the main tasks in the fight against organized crime becomes increasing the efficiency of combating it.

A first formulation of the notion of organized crime was made by American scholars. In 1971, the famous publicist Wolter Lipman mentioned that unlike the already determined crime that has a totally thieving character, organized crime is related to the redistribution of services and goods.

The American criminologist Alfred Landsmit defined organized crime as a special form of collaboration of several people or groups in order to ensure their efficient activity. Luiz Şelli considered organized crime cemented by financial interests. Violence is used here only to defend the

economic interests of the criminal group. Most organized criminals derive a large part of their income from illegal markets [1, p. 198].

The US Presidential Commission on Law Enforcement and Justice has explained organized crime in detail, defining it as an association that wants to operate outside the control of the American people and the authorities. It includes thousands of criminals who operate within structures as complicated as those of large corporations and are subject to laws of their own that are much more cruelly enforced than the laws of the state. Their actions are not impulsive, they are the result of complicated agreements, aimed at obtaining full control over some spheres of activity and excess profit.

Organized crime developed together with the newly created state after the dismemberment of the Soviet Union, which means that the Republic of Moldova has lived with this phenomenon since its creation as an independent state [5, p. 180].

The relevance and essence of the phenomenon of organized crime with those particularities or "specifics" proper to the Republic of Moldova, will allow the elaboration of methods and tactics of social control of this phenomenon.

Methods and materials applied. The complexity, diversity of forms of manifestation and the uneven character of organized crime at the current stage determined the use of information from public sources, materials accumulated from criminal cases and operative processing, as well as generally accepted methods, such as: methods of formal logic; historical method, statistical observation, mathematical and systemic methods.

Discussions and results obtained. In criminology of the Republic of Moldova, the definitions of organized crime appeared only in the 90s and are diverse.

In addressing the problem of organized crime, Valeriu Bujor was the first Moldovan researcher who in a doctoral thesis referred to the essence of this phenomenon. In his opinion, *organized crime is a form of social pathology, which manifests itself through the activity of criminal associations, in order to obtain profit and power through the production or offering of illicit goods and services, the latter not being satisfied legally* [2].

Some researchers characterize organized crime as a complex type of criminal activity that is carried out on a large scale by organized groups that have their own internal structure and obtain income by creating and exploiting the market for illegal goods and services.

Other criminologists understand by organized crime a relatively massive group of stable associations and directed by criminals, who practice criminal activity as a profession (business) and create a system of protection against public control through such methods as violence, intimidation, corruption and large-scale theft.

Author Octavian Bejan, mentions that organized crime constitutes a particular form of manifestation of criminality which consists of a criminal activity, well organized and professionalised, carried out in a group, with a pronounced hierarchy, with criminal norms and values defined precisely and rigorously applied, activity which is oriented towards obtaining consistent profits by producing or offering illicit products and services, responding to a considerable demand existing in society [3].

In accordance with Art. 2 of the RM Law No. 50 of 22.03.2012 regarding the prevention of combating organized crime by organized crime is understood as: "social phenomenon that includes criminal groups and organizations, their criminal activity, criminal acts committed by members of criminal groups and organizations, preparatory acts of criminal groups and organizations and of their members in order to commit crimes, as well as other crimes which, according to the Criminal Code, are considered committed by a criminal group or organization" [7].

Organized crime is a particularly dangerous social phenomenon, which can be presented as "the pinnacle of criminality". The basis for determining this type of crime is the character and degree of the criminals' interaction in carrying out the illegal activity. However, the latter is based on

the association of some people, the delimitation of their criminal roles, the hierarchy of the system of relationships. The higher the degree of organization of the group, the more the management functions are detached from those of the direct executors.

The organizers can establish and decide on various issues, can determine the mode of behavior, and can ensure the coordination system of the participants' actions as well as their security. At the same time, it is not mandatory to know the immediate executors. Organized groups have a stable character. The relations between the members are maintained even in the periods between the commission of specific crimes. During this time, new plans are drawn up, the conjuncture is studied, direct participants are selected, and defense measures are researched against criminal investigation and justice bodies.

Organized criminal groups, depending on the level of stability, professionalism, their legal situation within the legal structures of society, etc., can be divided into the following types:

Simple organized group – a relatively simple form of association of criminals in the number of 2-4 people. Robbers, swindlers, apartment thieves, thieves are associated in such groups. They do not have a complex structure, a strict subordination and a strictly determined leader.

Organized structural group. Compared to the first one, it is distinguished by greater stability, hierarchy and respects the principle of a single leader. The number of members can be 5-10 or more people. Their criminal activity is permanent and often includes attacks against property or violent crimes, the purpose of which is to obtain profits. The leader of such a group determines the direction of its activity, plans and prepares the commission of crimes, distributes the roles of the participants.

In order to ensure its activity, the organized structural group interacts with other criminal elements, in particular with people who practice falsifying documents, purchasing stolen objects, etc. These groups usually commit thefts from apartments, car thefts, thieves, robberies, scams, blackmail, and smuggling. Also, as a rule, they do not maintain corrupt relationships.

Organized criminal group – a very active and numerous criminal association that includes dozens or even hundreds of members. The level of organization within these groups is much weaker than in gangs and mafia groups, although they are characterized by discipline, hierarchy and subordination. The management of this group is carried out by several leaders who determine its orientation. Behind each leader is the main mass of executors with a certain criminal orientation. This criminal association is not monolithic; it includes multiple groups of 5-10 people, with different levels of organization, who not only commit crimes, but also keep a certain territory under permanent control (collecting "taxes", scams, etc.). Often their leaders, accumulating a considerable income, enter the sphere of legal business, gradually growing to mafia associations.

The criminal gang represents a form of organized crime that involves the creation of an armed group in order to commit attacks on public organizations, as well as on citizens. It is distinguished by increased social danger, the use of weapons being a mandatory indication.

The gangs are distinguished by a high level of organization and direct subordination to the leader. They operate independently, and the purpose of the attacks committed by them is usually obtaining money, seizing antiques and other valuables.

Some criminologists delimit three categories of gangs, which they conditionally name "classic gang", "specialized gang", "gang that commits crimes on order".

Classic gangs usually commit attacks on banks, cashiers, shops, museums, apartments, etc. Often these are accompanied by murders and causing serious bodily injuries.

Specialized gangs are distinguished by the fact that they practice one or two types of crime, the most frequent being attacks on banks and shops.

The gangs that commit contract killings are few in number, but their members are well-trained physically, armed, and extremely secretive. These gangs typically do not belong to criminal groups, although they may have connections with their leaders. All the killings they carry out

are for payment.

Mafia unions. The term "mafia" in the given case implies a combination of criminal and legal activity, with the use of deficiencies in the economic-legal system to obtain illegal income or administrative powers, the possibility of influencing the organs of power.

In this way, the mafia union is a criminal structure that, according to the degree of organization and the nature of the activity, exceeds the boundaries of its own formation and brings together forms of legal and illegal activity, influencing state policy and the orientation of social-economic development.

The mafia unions are covered by different commercial structures that serve to organize various dirty businesses and money laundering, as well as to establish corrupt relations with representatives of state power bodies. To ensure security, other criminal groups are attracted. Mafia syndicates are led by a few people and their status, as a rule, is identical. Besides these, from ten to hundreds of members come together, who, in case of necessity, perform concrete tasks for a certain payment.

Researchers from abroad delineate the general characteristics of unions, which in fact can determine other forms of organized crime, but are especially characteristic of criminal syndicates: their activity is stable and permanent; has the form of illegal business and consists in offering services and goods. The ultimate goal of mafia syndicates is to obtain enormous incomes by exercising control over certain spheres of social life. The latter actually means the monopolization of some markets and the penetration of central and local public administration bodies and political cover through corruption.

There is another classification of organized crime. Some specialists in the field delineate groups with a low, complex and high level of organization. But this classification does not indicate the precise boundaries between the types. Almost every one of these groups has multiple clues in common.

The term "organization" can be treated differently:

– as a logical sequence of actions;

– from the point of view of coordinating the actions of different participants;

– as the presence of the organization – the certain structure used to achieve certain goals.

Thus, the term "organization" applied in relation to crime includes the activity of the direct participants who planned and committed the crime and the activity of a criminal organization. The notion of organized crime must necessarily include the last of the three aspects listed, being one of the most dangerous types of crime that includes all crimes committed by criminal organizations.

In the legal-criminal literature, a criminal organization means a stable meeting consisting of two or more people, associated for the purpose of carrying out a common criminal activity.

The UN Convention against Transnational Organized Crime from 2000 defines organized crime as a structural group formed by three or more persons, who act coordinated for a certain period of time in order to commit one or more serious crimes, recognized as such by the given convention, to obtain direct financial or material profits.

From a criminological point of view, the criminal organization is characterized, first of all, by a certain structure, which is determined by:

– hierarchy;

– distribution of roles and functions;

– the presence of "normative prescriptions";

– self-financing;

– systematic criminal activity.

The last one is characterized by:

– illegal methods of achieving goals;

– professionalism and specialization;
– conspiracy;
– information and counter-information measures;
– tendency to neutralize the collaborators of law enforcement bodies and public administration;
– appearance of the legality of the actions.

Criminal organizations also carry out an information and counter-information activity to obtain the necessary information, attract collaborators from law enforcement bodies (through bribery, blackmail), discover people who offer help to justice.

A characteristic indication of criminal organizations is their endowment with high-performance technology. They possess ultra-modern models of transport, weapons, transmitters, listening devices, night vision devices, etc.

Organized crime is not only specific to one country and did not appear only in one state, but is an international phenomenon and one of the higher stages of the evolution of crime. According to the nature and form of activity, organized crime can be delimited as criminal or gangster crime, which deals in particular with thefts, robberies, extortion, scams, banditry, murders, dark economy, "white collar" crime that dispossess through looting of public and private wealth involving public persons in exceeding their duties, corruption and other crimes out of greed.

At the contemporary stage, organized crime in our country is characterized by the following fundamental indicators:

– pronounced organizational-administrative structure, well-defined hierarchy, norms of behavior, sanctioning and collective stimulation for all members;
– planned and conspired character of the criminal activity, common goals, orientation towards obtaining considerable material resources through the privatization of state property and through the rotation of capital with minimal risk;
– the presence of a system of measures to neutralize all forms of public control through the system of information and counter-information, discovering the plans of law enforcement bodies, bribing their collaborators, penetrating public administration structures;
– the presence of enormous funds (in national and foreign currency) that allow the deposit of considerable sums in various spheres of activity, including illegal ones, in order to obtain excess profit, to control certain markets, the mass media, as well as the material support of group members and of their relatives, payment of lawyers' services, etc.;
– the delimitation of spheres of influence – the cooperation of criminal groups organized in various economic branches, the creation of "black markets" of goods and services (narcotics trafficking, illegal arms trade , porn business, prostitution);
– the active propagation of the criminal subculture by members of organized criminal groups, especially among the younger generation.

The hypothetical model of criminal groups can be presented in the form of a pyramid. At its base are the "primary" groups of apartment thieves, swindlers, apartment burglars and other people who obtain income directly from their criminal activity.

On a higher level are the groups that can be conditionally called security assurance groups. This group includes people who do not directly take part in the commission of crimes. Their functions include:

– realization of leaders' decisions;
– control over the actions of executors;
– resolving conflict situations between criminal groups and solitary criminals;
– ensuring appropriate relations within the group and with other criminal groups;
– guarding the representatives of the elite group;
– ensuring the professionalism of executors;

– propagation of the criminal way of life;
– legalization of business obtained through criminal means;
– moral and material support of the criminal group members and their families.

The security group includes people who are in charge of organizing information and counter-information activities, as well as identifying useful people for the organized group (lawyers, journalists, doctors, civil servants). Their function includes:

– ensuring the high status of people from the elite group;
– creating conditions that prevent the fight against organized groups;
– compromising or neutralizing public officials, incorruptible collaborators of law enforcement agencies that fight organized crime;
– taking measures to release members and partners from criminal liability or to mitigate the sanction;
– consultation in legal matters;
– training group members regarding the forms and methods of activity of legal bodies.

At the top of the pyramid is the elite group, whose representatives – the "shadow leaders" – carry out the organizational, administrative and ideological leadership of the given system. They, as a rule, are not directly related to concrete crimes, due to which fact they remain outside the action of criminal laws. Their functions are:

– analysis and control over the political and social-economic situation in the state;
– development of activity plans;
– the search for new spheres of influence and activity;
– the development of measures to monopolize criminality, the modification of strategy and tactics depending on the changes in social and economic conditions;
– control of the activity of insurance and security groups.

The fundamental types of criminal activity of criminal groups are: drug trafficking, illegal arms trade, illegal import and export of cars, porn business, abuses in the field of privatization of public property, in the credit-banking system, entrepreneurship fictitious.

It should be mentioned that organized crime, based on several factors, is characterized by increased latency. That is why, as a rule, the legal-criminal statistics reflect only the visible part of the "iceberg". The context in which crime in the penitentiary environment was to be taken into consideration. In this sense, criminality in the penitentiary environment and organized crime correlate as a whole part.

In this sense, the authors Cernomoreț S. and Faiger A. indicate that the existence of formal and informal ties between convicts, on the one hand, and formal and informal relations between convicts and the prison administration, give a particular specificity to this type of crime [4, p. 350]. The context from which the "informal control" of the penitentiary environment by the "top-management" of the penitentiary environment of the Russian Federation, as the successor of the Soviet Union, cannot be excluded.

Conclusion. If we refer to the Republic of Moldova, its organized crime is also indispensable. We can mention that its geographical position plays a special role in the "particularization" of the latter. Either way, we cannot abstract ourselves from the concept and the "security architecture" of the Balkans and the Black Sea basin – area of promotion of the regional security policies of the European Union and beyond.

The component of the "frozen conflict" of the separatist region – "Transnistria" with the "sustainability of the Russian Federation", is another major factor threatening security and law and order, through the "intermediary of organized crime", along with similar situations in the Black Sea basin; the case of South Ossetia, Abkhazia, as well as the war in Ukraine.

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COMPARATIVE CRIMINAL LAW ASPECTS OF CRIMINAL LIABILITY FOR MONEY LAUNDERING OFFENCES

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Summary

The efficient prevention and combating of money laundering constitute a consistent priority of the world's states, based on both the adoption of international or European standards and the implementation of their own preventive national systems. Literally, through the prism of this research, the legislation regarding the criminalisation of money laundering within the penal framework of the world's states has been analysed, along with the evolution and progress made in this regard, combined with the implementation of recommendations from global instruments of significant scope in the legislation of the Republic of Moldova.

Such a study allows for the delineation of a comparative image that provides the opportunity to adopt the best existing practices in the field of preventing this scourge.

Keywords: money laundering, criminalisation, legal and penal aspects, comparative study, etc.

Introduction. This paper represents a useful research endeavor aimed at examining the evolution of the legal framework for the criminalisation of money laundering in national legislation across various countries, including those with permissive regimes regarding money laundering, thus delineating a comparative picture of the provisions of these states in this regard. Through the elaborated scientific research, an attempt has been made to present the regulations in the field of prevention and combating of money laundering at the international and European levels, the stage of implementation of recommendations by global bodies responsible for the prevention and combating of money laundering, and the progress made by law enforcement authorities in the retrospectively targeted domain in various countries worldwide.

The relevance of this research lies in the fact that, despite considerable progress being made at the legislative and criminalisation levels of money laundering internationally and particularly in Europe, the expected results by the entities involved in this sphere have not been fully achieved. States have established diversified mechanisms to counter this phenomenon, including uncontrollable cash flows and the accelerated criminal activity due to the evolution of the cyber space, all contributing to the overall development of the professionalism of those perpetrating these illegalities on one hand, and complicating the burden of responsibility for the authorities in charge on the other hand.

The methodology underpinning the elaborated study represents a combination of specific methods inherent to legal sciences: the method of logical analysis, focused on logical reasoning,

the application of which allowed for the legal argumentation of opinions, theses, and findings, including legal interpretations of normative acts; the comparative method, a method that facilitated the synthesis and examination of regulations in the field, based on identified similarities, differences, and the framework of progress achieved; the method of classification, by highlighting criteria through which various legal entities relevant to the subject under investigation were identified, etc.

Setting aside the allegorical history regarding the emergence of the money laundering phenomenon and the initial definitions associated with this scourge, the first criminalisation of money laundering was carried out in the United States of America, within an amendment to the *Racketeer Influenced and Corrupt Organisation Act (R.I.C.O. Act), a law in force since 1970*, adopted in 1986 under the name Money Laundering Control Act [1].

In this line of thought, a primary legislative tool in the fight against money laundering was represented by the criminalisation of money laundering offenses, initially focusing on proceeds generated from drug trafficking [2], and subsequently expanding to encompass almost all profit-generating crimes.

At the international level, the first significant attempts and efforts to legislate in the field of preventing and combating money laundering were materialised within the framework of the United Nations (UN) [3].

At the European level, a primary regulatory instrument in the field of preventing and combating money laundering was the *European Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime*, adopted in Strasbourg on November 8, 1990 (the Strasbourg Convention) [4], ratified by the Republic of Moldova through Law No. 914-XV dated March 15, 2002, in force since September 1, 2002, which expanded the notion of money laundering and included multiple predicate offenses.

Subsequently, on May 16, 2005, in Warsaw, the *Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism* (the Warsaw Convention) [5] was adopted, which updated and expanded the Strasbourg Convention to combat not only terrorism financing through money laundering, but also through other seemingly legal activities. The Warsaw Convention paid particular attention to the implementation of a common criminal policy among member and signatory states, especially focusing on the issue of depriving offenders of the proceeds of crime and similar instruments. Moldova ratified the Convention through Law 165/2007, in force since August 10, 2007.

Finally, the European regulatory framework for the offense of money laundering was succeeded by EU Directives in this regard, and currently, the EU is consolidating its efforts to finalise the New Regulation on Combating Money Laundering and Terrorist Financing, which will include provisions enabling the traceability of crypto asset transfers and the establishment of a new authority for combating money laundering and terrorist financing (AMLA) [6].

Discussions and results obtained. ***1. Incriminating aspects of the money laundering offense in national legislation.*** In the context of the status of being a candidate country for the European Union and the opening of negotiations for the Republic of Moldova's accession to the EU, it is emphasised that at the meeting of the Conference of the Parties on the thematic analysis of monitoring the implementation of Article 9(3)[1] "Laundering Offences" of the Council of Europe Convention on Laundering, Search, Seisure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism, dated November 10, 2023 [7], it was noted that the overall perfor-

[1] Article 9(3) of the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (the Warsaw Convention, 2005):
"Each party may adopt legislative and other measures deemed necessary, under its domestic law, to classify, as a criminal offense, all or some of the acts referred to in paragraph 1, in one or both of the following cases, when the offender: a) suspected that the property represented proceeds; b) should have presumed that the property constituted proceeds."

mance in this area is not the most satisfactory. In a recent study conducted by the Financial Action Task Force (FATF) (crimes and activities of money laundering are investigated, and offenders are criminally pursued and subject to effective, proportionate, and deterrent sanctions), this indicator was achieved by 59% of the countries evaluated by FATF until May 2019, obtaining a rating of "low" or "moderate" effectiveness level, while the countries evaluated by MONEYVAL (including the Republic of Moldova) obtained a proportion of 98% with a "low" or "moderate" effectiveness level [7, para. 9].

During the Council of Europe meeting, it was emphasised that Article 9(3) of the aforementioned Convention adds value to global standards in combating money laundering and terrorist financing by facilitating the establishment of the offense of money laundering. The practical implementation of this provision can enhance the efficiency with which states investigate and criminally prosecute money laundering offenses. Additionally, the added value of this provision is underscored by a parallel provision in Article 3(2) of Directive (EU) 2018/1673 of October 23, 2018, on combating money laundering by means of criminal law measures, which is to be transposed into the legislation of the Republic of Moldova [8].

In this context, regarding the regulation in the legislation of the Republic of Moldova of measures allowing for the documentation of money laundering offenses in cases where a person suspected that the assets represented proceeds of crime, it was reiterated that the offense of money laundering is criminalised in the Criminal Code of the Republic of Moldova, Article 243, as follows:

(1) Money laundering committed by:

a) converting or transferring assets by a person who knows or should have known that they constitute illicit proceeds, with the purpose of concealing or disguising the illicit origin of the assets or assisting any person involved in the commission of the predicate offense to evade the legal consequences of these actions;

b) concealing or disguising the nature, origin, location, disposition, movement, or ownership rights of assets by a person who knows or should have known that they constitute illicit proceeds;

c) acquiring, possessing, or using assets by a person who knows or should have known that they constitute illicit proceeds;

d) participating in any association, agreement, complicity by providing assistance, aid, or advice for the commission of actions referred to in points (a)-(c) […]

(2) The same actions committed:

b) by two or more persons;

c) using their official position […]

(3) The actions referred to in paragraph (1) or (2), committed:

a) by a criminal organisation or a criminal group;

b) on an especially large scale […].

(4) Unlawful actions also include acts committed outside the country if they contain the elements of a crime in the state where they were committed and may constitute the elements of a crime committed on the territory of the Republic of Moldova.

Related to the situation in which the person suspects *that the goods are products of crime*, The Republic of Moldova presented a case study.

The peculiarity of the guilt form of money laundering incriminated by Article 243 of the Criminal Code of the Republic of Moldova is given by the use of the alternative phrase "who knows or should have known that they constitute illicit proceeds", which is found in all three simple normative variants of money laundering incrimination. Thus, it can be observed from the incriminating text that the subjective element of money laundering is completed by two alternative requirements that the perpetrator must meet, possibly "knowing" or "should have known" that the assets have an illicit origin.

Even though the phrase "who knows" does not raise interpretation issues, essentially representing the same requirement of knowing the illicit nature of the assets, similarly to the incrimination of money laundering in Romania, the same cannot be said about the phrase "who should have known", which by hypothesis sanctions even those who did not know but should have known about the illicit origin of the assets.

In procedural terms, this leads to a reversal of the burden of proof, raising a potential issue of constitutional compatibility, primarily due to the ambiguity regarding whether, in the case where the perpetrator "should have known that the assets constitute illicit proceeds", the Moldovan legislator has, in fact, criminalised money laundering committed through negligence rather than with intent. Thus, aligning with the notion of committing an offense through negligence as provided in Article 18 of the Criminal Code, we conclude that since the perpetrator "should have known," it is presumed that they did not actually know that the assets were of illicit origin; therefore, by not being aware of the illicit nature of the assets, they neither foresaw the possibility of harmful consequences nor realised the harmful nature of their actions.

By Decision No. 182 of December 15, 2022, [9] the Constitutional Court of the Republic of Moldova observes that the phrase "who should have known" in Article 243 para.(1) letter b) of the Criminal Code represents an alternative means of proving knowledge of the criminal origin of the assets and implies that the person had reasonable grounds to believe that they were obtained through illegal methods. In this context, the Court specifies that the transparency rules in anti-money laundering legislation can serve as a guideline in this regard. These rules establish objective criteria that can be applied to determine whether a person should have known the illegal origin of the assets.

In this regard, the Warsaw Convention stipulates that "each Party may adopt legislative and other measures deemed necessary to classify, under its internal law, as a criminal offense all or some of the acts referred to in paragraph (1), in one or both of the following cases, when the offender: a) suspected that the assets represented proceeds; b) should have presumed that the assets constituted proceeds" (Article 9 para.(3) of the Convention), while the Strasbourg Convention provides that "Each Party may adopt the measures it considers necessary, under its internal law, to classify, as criminal offenses, all or part of the acts referred to in paragraph (1), in one or all of the following cases, where the perpetrator should have presumed that the property constitutes proceeds from criminal activity" (Article 6 para.(3) letter a)).

The Court notes that the phrase "should have known" refers to the subjective aspect [which, moreover, is characterised by intent] of the money laundering subject in relation to the predicate offense proceeds, which must be established in each specific case (see DCC No. 109 of November 7, 2017, § 36). In this case, knowledge, intent, or purpose, which must be fulfilled as elements of the money laundering offense, may be classified as objective factual circumstances (Article 6 para. (2) letter c) of the Strasbourg Convention), which can be inferred from the objective circumstances of the act (Article 9 para.(2) letter c) of the Warsaw Convention).

Therefore, the Court found the unfounded nature of the allegation's claim asserting a violation of the standard of the quality of the law. Literally, it underscores the behavior of incriminating the offense of money laundering, which in 25 European states has been regulated as self-laundering, meaning the laundering of money by the perpetrator of the offense from which the illicit assets originate, implicitly when the provision incriminating money laundering does not exclude liability for self-laundering, or explicitly, based on a legislative act, as in the case of Italy (Article 648 ter. 1 of the Italian Penal Code). The text of the criminal norm makes no distinction as to whether the subject of the predicate offense can also be the subject of the money laundering offense. In this sense, nothing in the contested texts can be interpreted as making it impossible to sanction the same person for both committing the predicate offense and money laundering.

2. Incriminarea infracţiunii de spălare de bani la nivel internaţional. The legislative

framework for combating money laundering in the United States of America it is mainly represented by legislation passed at the federal level, more exactly, The Bank Secrecy Act (BSA) [10], as it was modified by the USA Patriot Act.

Money laundering is criminalised as an offense at the federal level, but there are also states that have separately regulated this area, considering that the risk associated with money laundering is sufficiently high. Legislation in the United States of America provides for no less than four types of actions that are federally criminalised as acts falling within the concept of money laundering [11].

The United Kingdom of Great Britain and Northern Ireland has its own legislation in the field of money laundering, which includes the Proceeds of Crime Act 2002 (POCA) and the 2017 Regulations on Money Laundering, Terrorist Financing, and Transfer of Funds [12]. Other laws relevant to money laundering include the Terrorism Act 2000 (TACT), which contains offenses related to terrorist financing, and the Sanctions and Anti-Money Laundering Act 2018 (SAMLA), designed to facilitate the UK's transition out of the European Union and to ensure the maintenance of existing regulations, including FATF international standards and recommendations. SAMLA also allows the UK to create its own national sanctions framework. The main legislative act, POCA, applies to presumed money laundering behaviors occurring on or after February 24, 2003. There are three main money laundering offenses under POCA, defined in accordance with the Vienna and Palermo Conventions, and these apply across all jurisdictions in the United Kingdom.

In the Netherlands, Luxembourg, and Belgium, the majority of money laundering cases that reach the courts involve self-laundering. Self-laundering is criminalised under Article 195 of the Penal Code of Latvia and Article 216 of the Penal Code of Lithuania [13]. In Estonia, judges have established through jurisprudence, by a reasonable interpretation, that money laundering also covers self-laundering.

The legislative framework in France provides several variants that criminalise money laundering offenses depending on the nature of the predicate offense. The basic form of the offense criminalises simple acts of receiving sums of money derived from the commission of any offense or misdemeanor. The special form of the money laundering offense pertains to proceeds from drug trafficking. The material element of money laundering offenses essentially involves the transposition of alternative modes of committing such acts provided for under the Vienna and Palermo Conventions. This specifically refers to the conversion or transfer of property as well as the concealment or disguise of the true nature, source, location, disposition, movement, or ownership of goods.

In Germany, liability for money laundering was expanded in 2015 to include self-laundering ((StGB) § 261 Geldwäsche). In this context, Germany has repeatedly harmonised its legislation on the prevention and combating of money laundering to align with the Vienna and Palermo Conventions. In 2021, Article 261 of the German Criminal Code was harmonised to primarily allow for the prosecution of money laundering offenses committed by the perpetrator of the predicate offense from which the assets originated. The offense of money laundering is federally criminalised and applies in all German states, according to the Basic Law. Regarding the criminal conduct covered by the federally adopted legal framework, at this point, the offense of money laundering as defined explicitly encompasses the following activities: acquiring, possessing, or using proceeds, concealing or disguising the true nature, source, or location of assets, and transferring and converting proceeds [13].

As reiterated earlier, in the case of Italy, which has fully regulated the provisions of the Vienna and Palermo Conventions, the Italian Penal Code was supplemented by two additional provisions addressing aspects of the offense (the illicit origin of the proceeds of the crime): Article 648 (receipt) and Article 648 (use of money or goods of illicit origin) [14].

In Hungary, there has been a choice to limit the scope of self-money laundering, but as in

many other European Union states, there have been debates regarding sanctioning self-money laundering or only the predicate offense. In Hungary, it has been argued that incriminating forms of self-money laundering – such as using money obtained from committing crimes – could become problematic in light of the principle of ne bis in idem. Thus, in its solution for incrimination, the Hungarian legislator has stipulated that money laundering is punishable only when the money obtained from another person's commission of a crime is laundered, and self-money laundering is punished only in exceptional cases [13].

In Liechtenstein, money laundering offenses are primarily criminalised under the main legislative act in the penal domain, namely the Penal Code. This document distinguishes between acts of money laundering involving assets derived from the commission of a crime and those involving assets belonging to a criminal organisation or a terrorist group. Thus, to obtain a conviction for committing a money laundering offense under Article 165(1) or (2) of the Penal Code, the prosecution must prove that the perpetrator committed the act in one or more of the alternative modalities listed by the legislator in paragraphs 1 and 2 of Article 165 of the Penal Code.

The legal framework regarding money laundering in Panama, which is considered a non-cooperative jurisdiction for tax purposes [15], is governed by Chapter IV of the Penal Code titled "Offenses of Money Laundering" [16], specifically within Articles 254-259. In accordance with the provisions of Article 254 of the Penal Code of the Republic of Panama, the offense of money laundering in its ordinary form, constitutes the act of any person who "personally or through an intermediary, receives, deposits, negotiates, transfers, or converts money, titles, securities, goods, or other financial resources, reasonably foreseeing that they originate from activities related to international bribery, offenses against copyright and related rights, against industrial property rights or against humanity, drug trafficking, illicit association for the commission of drug-related offenses, qualified frauds, financial crimes, illegal arms trafficking, drug or human trafficking, kidnapping, extortion, embezzlement, murder for hire or reward, environmental offenses, corruption of public officials, illicit enrichment, acts of terrorism and financing of terrorism, child pornography and corruption, trafficking and sexual exploitation, international theft or commercial vehicle trafficking, with the purpose of concealing or hiding their illicit origin or to help avoid the legal consequences of such offenses. This shall be punishable by imprisonment for a term ranging from five to twelve years".

Additionally, Article 254-A provides that: „Anyone, directly or through an intermediary, who receives, holds, deposits, negotiates, transfers, or transforms money, securities, assets, and other financial resources, knowing that they originate from offenses against the National Treasury provided for in this Code, with the aim of concealing or disguising its illegal origin or of any person who contributed to avoiding the consequences of such criminal acts, shall be punished with imprisonment from two to four years. If it is found that the offense referred to this article was committed through one or more legal entities, the sanction shall apply to the legal entity in question and shall be a fine of up to three times the amount of the evaded tax" [16].

By the same legislative act, enacted as a result of international pressure [17], Panamanian authorities, through Article 2 of the same law, added Chapter XII to Title VI of Book II of the Penal Code, comprising Articles 288-G, 288H, 288-I, and 288-J. Thus, the offense of tax fraud (Article 288-G CP) was added as part of offenses against the National Treasury.

The offense is provided in a form assimilated to Article 255 of the Penal Code of Panama, which stipulates that the act of any person shall be punished who:

Without participating, but knowing the origin, conceals or hinders the determination of the origin, location, destination, or ownership right of money, goods, securities, or other financial means or contributes to ensuring their benefit, when they come from or have been obtained directly or indirectly from any of the illegal activities mentioned in the preceding article or, in any other way, assist in ensuring its benefit.

Conducts transactions either personally or through another person, natural or legal, through a banking, financial, commercial, or any other institution, with money, securities, or other financial resources that come from any of the activities provided for in the preceding article.

Personally, or through an intermediary, natural or legal person, provides false information to another person or to a banking, financial, commercial, or any other institution, to open a bank account or to carry out transactions with money, securities, goods, or other financial resources, originating from the commission of some of the activities provided for in the preceding article.

The Bahamas [18], which, along with 12 other states, was removed from the EU's list of non-cooperative jurisdictions for tax purposes on February 24, 2024, has enacted legislation criminalising money laundering activities in accordance with the provisions of Article 3 para.(1) letter b) and c) of the Vienna Convention and Article 6 para.(1) of the Palermo Convention. Money laundering offenses are encompassed in the following legislative acts: the Precursor Chemicals Act, the Dangerous Drugs Act (DDA), and the Proceeds of Crime Act (POCA), with the latter being the primary legislation governing the matter.

Part V of the Proceeds of Crime Act (POCA) contains key money laundering offenses, with sections 40-44 criminalising the concealing, transferring, or disguising of proceeds of criminal conduct, assisting another person to retain the proceeds of criminal conduct, acquiring, possessing, or using such proceeds, as well as failure to disclose knowledge or suspicion of money laundering.

Conclusion. The illustrated research allowed assessment of the implementation stage of international legislative acts and European legal instruments in the field of prevention and combating money laundering in the national legislation of countries worldwide, particularly the criminalisation within national legal frameworks of the phenomenon of money laundering.

As a result, it is concluded that, typically, states are the ones who decide which behaviors to criminalise. However, this authority is limited in the case of transnational crimes, such as money laundering. Effective combating of money laundering involves the uniform criminalisation of this offense in national legislations. Otherwise, some states may become conducive environments for money laundering, namely jurisdictions where money laundering is not effectively sanctioned.

The offense of money laundering was introduced into the Penal Code of the Republic of Moldova following the implementation of various international treaties to which the Republic of Moldova is a party (the Strasbourg Convention, the Warsaw Convention, and the United Nations Convention against Transnational Organised Crime, adopted in New York on November 15, 2000). Subsequently, following the evaluation of the implementation of AML/CTF (anti-money laundering and counter-financing of terrorism) measures by the experts of the Moneyval Committee in October 2019, and later in May 2022, progress was assessed regarding the recommendations outlined in Evaluation Report No.5. As a result, the content of Law No. 308/2017 on the prevention and combating of money laundering and terrorism financing (in force since July 1, 2023) was substantially modified.

As a result of the comparative analysis of the reference legislations of the mentioned states, we conclude that money laundering is subject to different methods of criminalisation, with some specific regulatory differences concerning the legal and criminal aspects for each state. Some countries have a separate legislative act that regulates the prevention and combating of money laundering, while others limit themselves to the criminalisation of these offenses in the penal law, including separately regulating the illicit origin of goods - products of the offense.

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COMPLETION OF CRIMINAL PROSECUTION

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Summary

The article focuses on the prosecution completion process, a crucial stage in the criminal procedure. In this sense, the completion of the criminal investigation is not a formality, but is the result of a preliminary analysis of the evidence, the legality of obtaining it and the respect of the rights of the parties involved in the process. This stage is fundamental because it decides whether there is enough evidence to send the case to court.

The analysis of the subject brings into discussion the imperfections of the criminal procedural legislation, which, in some cases, does not fully meet the procedural requirements. Furthermore, an important aspect addressed in the article is the presentation of the materials of the criminal case to the parties involved in the process. It would be essential the rights of the parties to be always respected in accordance with Article 6 of the European Convention on Human Rights, ensuring their free and fair access to justice.

Through the recommendations and proposals made in this context, the aim is to clarify the legal procedures and improve the actions of criminal investigation bodies and prosecutors, in order to comply with European quality standards and to ensure a fair criminal trial that respects human rights.

Keywords: criminal trial, rights, criminal prosecution body, prosecutor, completion of criminal prosecution, access of the parties to the materials of the criminal case.

Introduction. At first sight, the completion of the criminal prosecution is a stage of closing of the crime investigation and documentation activity.

Completion of the criminal investigation, as a distinct stage, does not equate to the exhaustion of the criminal investigation phase, in other words, the closing of any procedural activities by the criminal investigation body or the prosecutor.

We support this reasoning, considering that after informing the parties about the end of the criminal investigation and the presentation of the file materials, the prosecutor *ex officio* or at the request of the parties is entitled to personally carry out the procedural actions to complete the criminal investigation or to restore the actions carried out in violation of the legal provisions, as well as to return the case to the criminal investigation body for the same purpose.

"The closing of the criminal prosecution does not correlate with the end of the criminal investigation phase, which implies the end of the last procedural activities of this phase (for example, sending of the criminal investigation file in which the indictment was issued to the competent court)" [1, p.840].

"The procedural activities that take place between the start of the criminal prosecution and the moment of its presumptive completion represent the stage of the criminal investigation, and those that take place between the moment of the presumptive completion of the criminal prosecution and the moment of the actual (so-called) closing of the prosecution form the stage of sentencing" [2, p.84].

The essence of this stage is that the criminal investigation officer and the prosecutor, com-

pleting the examination of the criminal case, make certain conclusions based on the results of their activities, evaluate the administered evidence if it reveals objectively, completely and under all aspects the circumstances of the case and if they are sufficient and teeming to make the decision final in the criminal case.

Methods and materials applied. The respective research has been developed by applying several scientific investigation methods specific to criminal procedural theory and doctrine: logical method, comparative analysis method, systemic analysis, etc. The applicability of the theoretical, normative and empirical material was the basis for the elaboration of the aforementioned article.

The purpose of the research consists in analysis, study and the impact of the domestic normative framework, doctrine and jurisprudence with reference to the completion of criminal prosecution.

Discussions and results obtained. Finding that the administered evidence is sufficient to complete the criminal prosecution, the criminal investigation body submits the file to the prosecutor accompanied by a report, in which it records the result of the criminal investigation, with the proposal to order one of the following solutions:

indictment of the perpetrator and filing of the accusation according to the provisions of Art. 281 and 282 of the Criminal Procedure Code with the condition that he was not charged during the criminal investigation. This solution is proposed when it appears from the case materials that the detected act is incident to criminal liability, that the perpetrator has been found and he bears criminal liability;

– completion of the criminal investigation, closing of the criminal case or removing the person from the investigation.

– The criminal investigation officer's report must include:

– the deed that served as the basis for starting the criminal investigation;

– information about the person of the suspect or the accused;

– the legal framework of the deed;

– information about the criminal bodies and the measures taken regarding them, as well as their location;

– precautionary measures taken during the criminal investigation;

– legal expenses;

– preventive measures applied or proposed.

If the criminal prosecution in the same case is carried out regarding several acts and several persons (perpetrators), the report will include information on all the accused, the legal framework of the deed and the administered evidence.

The report will also include the information regarding the deeds or the persons against whom the completion of the criminal prosecution was ordered, removal of the person under investigation.

The prosecutor, within no more than 15 days after receiving the file sent by the criminal investigation body, checks the materials of the file and the procedural actions carried out, ruling on them. Cases involving arrested persons or minors have priority and are urgently resolved.

In accordance with the provisions of Art. 290 of the Criminal Procedure Code, if the prosecutor finds evidence obtained contrary to the provisions of the criminal procedural law and in violation of the rights of the suspect, the accused, by reasoned ordinance, excludes this evidence from the file materials [3]. Evidence excluded from the file is kept under the conditions of Art. 211 paragraph (2) of the Criminal Procedure Code.

"...Article 290 of the Code regulates the verification by the prosecutor of the file materials and procedural actions carried out within the received case and does not directly refer to the examination of requests or approaches" [4].

Finding that the criminal investigation is complete, that there is sufficient and legally admin-

istered evidence; the prosecutor indicts the perpetrator (suspect), if he was not indicted during the criminal investigation, then prepares the indictment by which he orders the case to be sent to court. If the perpetrator was indicted during the criminal investigation, draws up the indictment ordering the referral of the case to court.

The prosecutor can order by reasoned ordinance the completion of the criminal investigation, the classification of the criminal case or the removal of the person from investigation, in cases where the existence of the legal grounds and conditions for such decisions is established (Art. 291 of the Criminal Procedure Code).

If the prosecutor finds that the criminal investigation is not complete or that the legal provisions were not respected when conducting the investigation, he returns the case to the body that carried out the criminal investigation or sends the case to the competent body or another body, for the completion of the criminal investigation or, as the case may be, for the elimination of the violations committed by the legal provisions.

The restitution or referral of the case is made by an ordinance in which the procedural actions, which must be carried out or redone, of the facts and circumstances to be ascertained, the means of evidence to be used and the deadline for follow-up are indicated.

"The return of the case or its referral to the competent body or to another body is partially done by severing the case if it is necessary to eliminate some violations or to complete the criminal investigation regarding a minor, a person against whom coercive measures of a medical nature must be applied or in a complex case regarding an act committed by the accused if for most of the criminal acts and of the other accused the prosecution is complete and legal" [5, p.448].

If he deems it necessary, the prosecutor, within a reasonable period of time, personally carries out the procedural actions to complete the criminal investigation or to restore the actions carried out in violation of the legal provisions, after which he decides to terminate the criminal investigation.

If the prosecutor returns the case or sends it to another criminal prosecution body, he is obliged to rule, in the manner provided by law, on preventive measures and other coercive procedural measures.

After the prosecutor's verification of the case materials and the indictment of the person, if this was not previously done, the prosecutor informs the accused, his legal representative, the defender, the injured party, the civil party, the civilly responsible party and their representatives; as well as the procedural successor about the completion of the criminal investigation, the place and the term in which they can learn about the materials of the criminal investigation. With regard to informing the trial participants about the end of the criminal investigation, a report is drawn up in accordance with the provisions of art. 260, 261 of the Criminal Procedure Code.

Art. 6 paragraph (1) of the ECHR requires the prosecuting authorities to disclose to the defense all material evidence in their possession against the accused [6].

The Criminal Procedure Code of Romania "no longer imposes on the criminal investigation body the obligation to present the criminal investigation material, as ensuring the defendant's effective defense during the criminal investigation phase is achieved in the new concept by regulating the general law of the suspect, the defendant/his lawyer to assist in the execution of the majority of investigative documents and by the detailed provision of their right to consult the file throughout the criminal process" [1, p. 841].

The ECtHR ruled in the case of *Beraru v. Romania* that the "facilities" that must be provided to any accused in the context of Art. 6 paragraph (3) letter b) from the Convention include the possibility of being informed, for the preparation of his defense, about the result of the investigations carried out during the trial [7].

The ECtHR held that the plaintiff's lawyers could not obtain direct access to the case file until a late stage; initially, they were not provided with any copy of the indictment. Furthermore,

they were unable to obtain a copy of the wiretap transcripts or a recorded copy of the intercepted telephone conversations used as evidence in the case. The ECtHR concludes in this case that the trial in litigation, as a whole, did not comply with the requirements of a fair trial, that none of the irregularities found in the criminal investigation phase and the trial phase in the first instance were not remedied by the hierarchically superior courts [7].

Acquaintance with the materials of the file is a right for the parties, except for the defender, who is also obliged to study the parts of the file. According to Art. 68 paragraph (1) point 10) of the Criminal Procedure Code, at the request of the defender, the possibility will be offered to make copies of the documents in the file, including the information in digital format.

In order to facilitate the work of the defense, the defendant cannot be prevented from obtaining a copy of the relevant documents from the file, nor from taking notes or using them *(Rasmussen v. Poland*, §. 48-49 [8]; *Moiseyev v. Russia*, §. 213-218 [9]; *Matyjek v. Poland*, §. 59 [10]; *Seleznev v. Russia*, §. 64-69 [11]).

The civil party, the civilly responsible party and their representatives are presented for their familiarization only the materials related to the civil action to which they are a party. The injured party is aware of all criminal investigation materials.

The materials of the criminal investigation are brought to the attention of the arrested accused in the presence of his defense counsel, and at the request of the accused – to each of them, separately.

In the case of Öcalan *v. Turkey* of 12.03.2003 (§. 122), the ECtHR found that the provisions of Article 6 paragraphs (1), (2) and (3) of the Convention, due to the restrictions and difficulties the applicant had to face in terms of the assistance of his counsel, access – both by him and by his lawyers – to the case file, as well as his lawyers' access to the entire prosecution file [12].

The materials of the criminal investigation are presented sewn into the file, numbered and recorded in the registration form. The numbering and the registration form will be done for each volume [13, p.714], in case there are several. At the request of the parties, the crime bodies will also be presented, the audio and video recordings will be reproduced, except for the cases provided for in Art.110 of the Criminal Procedure Code (special ways of hearing the witness and his protection).

The non-disclosure to the defense of some material evidence that contains elements that can exonerate the accused or reduce his punishment can be considered a refusal to grant the facilities necessary to prepare the defense and, therefore, a violation of the right guaranteed by Art. 6 paragraph (3) letter d) of the Convention. However, the accused may be required to give specific reasons for his request, and national courts may examine the merits of these reasons [14]. In order to ensure the preservation of state secrets, commercial or other official information with limited accessibility, as well as in order to ensure the protection of the life, bodily integrity and freedom of the witness and other persons, the investigating judge, according to the prosecutor's approach, may limit the right to take acquaintance with the materials or data regarding their identity [15]. The approach is examined under conditions of confidentiality, in accordance with the provisions of Art.305 of the Criminal Procedure Code.

Directive No. 2012/13/EU establishes in Art. 7 paragraph (4) that access to certain materials can be refused, if such access could lead to the serious endangerment of the life or fundamental rights of another person or if the refusal is strictly necessary for the defense of an important public interest, such as for example in cases where access may prejudice an ongoing investigation or seriously affect the internal security of the Member State where the criminal proceedings are taking place [16].

The right to disclosure of relevant evidence is not an absolute right. In order to ensure that the accused has a fair trial, any difficulties caused to the defense by a limitation of his rights must be sufficiently counterbalanced by the procedures followed by the judicial authorities at the later stages of the trial [17].

In some cases, it may be necessary to withhold certain defense evidence to preserve the

fundamental rights of another person or to protect an important public interest. However, only such measures restricting the rights of the defense which are strictly necessary are permitted under Article 6 § 1 (see ECtHR Judgment Van Mechelen and Others v. Netherlands of 23.04. 1997, §. 54, 58) [18].

If the criminal file has several volumes, they are presented simultaneously in order to learn about the respective materials so that the person who learns about them can return to any of these volumes several times.

According to the doctrine, no time standards are established when the parties are aware of the file materials, and there is no jurisprudence.

"In most cases in practice, the standard of 10 pages per hour is used – a standard taken from other fields" [19, p.832].

The term for taking cognizance of the materials of the criminal investigation cannot be limited, but if the person who takes cognizance of the materials abuses his situation, the prosecutor fixes the manner and term of this action, based on the volume of the file [20].

After they have become aware of the materials of the criminal investigation, the persons who have become aware can make new requests regarding the criminal investigation, which are resolved according to the provisions of Art.245-247 of the Criminal Procedure Code (submission, examination deadlines and resolution of approaches and requests).

The criminal procedural law does not provide for a term in which the parties, after studying the criminal file, would have the right to submit requests.

"Limiting or not granting a deadline, upon completion of the criminal investigation for the submission of requests, would place the person in a situation of uncertainty and would naturally affect the substance of the right, this right becoming an illusory one. Therefore, starting from the importance of the requests that can be submitted at the end of the criminal investigation, the parties must have a sufficient and reasonable deadline for the submission, and the lack of it would affect the essence of the right" [21].

After the presentation of the criminal investigation materials, a report is drawn up indicating the number of volumes and the number of pages in each volume of the file that was taken into account, the criminal bodies, the reproduced audio and video recordings. The time of the start and end of the review of the file for each day must be recorded in the minutes.

The minutes record the requests submitted for this action, and the written requests are attached to the minutes and this is mentioned in it. Regarding the presentation of the file materials, a separate report is drawn up for each person participating in the process (For example: if there are several defendants in a criminal case, all materials from the file are presented to each one, as well as in the case of injured parties, civil parties, civilly responsible parties and their representatives). The prosecutor examines the requests submitted after the materials of the criminal investigation have been made known immediately and, by reasoned ordinance, their admission or rejection is ordered within 15 days at most, and within 24 hours, the respective ordinance is brought to the attention of the persons who submitted them.

"We consider it appropriate to expressly include in Art. 293 paragraph (6) the provision according to which the refusal of the criminal investigation body to carry out additional procedural actions can be challenged in accordance with Art. 298 and 299 of the Criminal Procedure Code. The lawyer can challenge the refusal to hear the witness at any stage of the criminal investigation" [22, p.379].

The Constitutional Court *mentions that after the end of the criminal investigation, the accused has the right to learn about all the materials of the case and submit requests to complete the criminal investigation [see Article 66 paragraph (2) point 22 of the Code]. The given requests are examined by the prosecutor in accordance with the provisions of the Code of Criminal Procedure, and the rejection by the prosecutor of the respective request or approach does not deprive the person who submitted them of the right to submit them later in court [see Article 295 paragraph (4) of the Code]* [23].

... The Criminal Procedure Code does not contain provisions that would allow the prosecutor to ignore the requests submitted by the defense and send the criminal case to trial. On the contrary, the law obliges the criminal investigation body to examine the requests and approaches of the participants in the process and other interested persons [see Article 278 of the Code] [23].

In this context, we agree that "The practice of submitting the file to the court without examining the request is unjustified, with a subsequent answer, according to which the person can benefit from his right provided for in paragraph (4) of Article 295, to submit the request to the court" [19, p.837].

If the prosecutor orders the admission of the requests, he also orders, in necessary cases, the completion of the criminal investigation, indicating the additional actions that will be carried out and, as the case may be, submits the file to the criminal investigation body for execution, with the establishment of the execution deadline.

After completing the criminal investigation, the additional criminal investigation materials are presented to the parties in the process in the order provided by Art.293 of the Criminal Procedure Code. In this case, if desired, the parties could take cognizance of the materials that supplemented the criminal investigation, given that they know the content of the other procedural documents.

If the accused is evading prosecution or refrains from appearing in order to learn about the materials of the case and receive the indictment, the prosecutor will present the materials to the defender elected or appointed "*ex officio"*, with the attachment to the file of the proof of notification of the accused regarding the completion of the criminal investigation and the possibility of studying the file [24].

The European Court held that the presentation of criminal investigation material is a right rather than a legal obligation, finding arbitrary the forced bringing for this purpose [25].

Non-appearance of the accused, his legal representative, the defender, the injured party, the civil party, the civilly responsible party and the procedural successor to take cognizance of the materials of the criminal case, informed according to the order established in the law about the termination of the criminal prosecution as well as about the time and place coordinates for the realization of this right, does not prevent the prosecutor from proceeding with the drawing up of the indictment.

Analysis of the provisions of Art. 291 and 293 of the Criminal Procedure Code allows to establish that the presentation of the materials of the investigation file is done not only in the case of the decision to send the file to court with an indictment, but also in cases where the prosecutor decides to withdraw from the criminal investigation, the termination of the criminal investigation or the classification of the criminal process. This deduction is in accordance with ECtHR jurisprudence on the matter [26].

Completion of the criminal investigation when the accused evades the criminal investigation was included as a procedure distinct from the competence of the investigating judge under Law No. 189 of 17.07.2022, by supplementing the Criminal Procedure Code with Art. 291/1 and Art. 305/1.

In the event that the accused evades prosecution or his location is not established following search investigations or it was not possible to file charges in accordance with the provisions of Art. 282/1 of the CPC; the prosecutor, by a reasoned ordinance, *ex officio* or at the request of the criminal investigation body, orders the completion of the criminal investigation in the absence of the accused, with the information of the chosen defender or the lawyer who provides legal assistance guaranteed by the state, and submits an approach to the judge of instruction requesting consent to complete the criminal investigation.

To complete the criminal investigation in the absence of the accused, Art. 291/1 paragraph (2) of the Criminal Procedure Code, imposes finding the cumulative meeting of the following 4 conditions:

1) in respect of the person, an indictment was issued for committing one or more serious, particularly serious or exceptionally serious crimes according to the Criminal Code;

2) the accused evades the criminal investigation or his whereabouts are not established and his presence before the criminal investigation body was not possible;

3) search investigations were ordered regarding the accused;

4) the person charged is not a minor.

Completion of the criminal investigation in the absence of the accused is not allowed in the case of accusations of committing light or less serious crimes, except in cases where the crimes are incriminated by the same persons who evade the criminal investigation or whose whereabouts have not been established and in search investigations have been ordered regarding them, and dissociation will adversely affect the full and objective conduct of the criminal prosecution and judicial investigation.

When in the same criminal case there are several defendants, one of whom is wanted and is accused of committing one of the serious, particularly serious or exceptionally serious crimes, the prosecutor can order the completion of the criminal investigation in the absence of the accused that is wanted. The criminal prosecution against the other accused continues according to the general procedure.

The approach regarding the authorization of the completion of the criminal investigation in the absence of the accused is examined in a closed session within no more than 5 days, with the mandatory participation of the prosecutor and the defender elected or appointed *ex officio*.

"The European Court noted that a person accused of committing a crime is not deprived of the right to be defended by a lawyer just because he did not appear in the court. On the other hand, the Court mentions that, although the presence of the accused in the court session is of particular importance for the fairness of the procedure, the legislator must discourage unjustified absences and ensure the rapid and effective conduct of the process. The lack of reaction from the accused must not paralyze the court proceedings (DCC No. 124 of 30 October 2018, § 23)" [27].

The prosecutor must point the following in the request: the deed that is the object of the accusation, the legal provisions in which it falls and the punishment prescribed by law for the crime committed, the circumstances, accompanied by relevant evidence, from which there is a reasonable suspicion that the accused committed the deed, the circumstances that confirm that the accused evades prosecution or that his whereabouts have not been established, the measures taken to find the accused accompanied by relevant evidence, the circumstances justifying the continuation of the criminal prosecution in the absence of the accused, the factual arguments and circumstances and the list of evidence in support of the action, including the list of witnesses to be heard regarding the circumstances that would confirm or deny the evasion of the criminal prosecution or the impossibility of establishing the whereabouts of the accused.

"The Constitutional Court observes that Article 305/1 paragraphs (2) and (4) of the Criminal Procedure Code requires the prosecutor to indicate in the procedure relating to the authorization of the completion of the criminal investigation in the absence of the accused both the circumstances that result from the reasonable suspicion that the accused committed the act, as well as the circumstances that justify the continuation of the criminal prosecution in the absence of the accused" [27].

In the procedure for examining the approach, the investigating judge has the right, *ex officio* or at the request of the parties, to hear witnesses, examine the requests of the parties or examine other relevant materials in order to ascertain whether all the necessary measures have been taken in order to identify the location of the accused and that he evades prosecution or that his whereabouts are not established.

After examining the approach and the materials presented, the investigating judge adopts a reasoned conclusion regarding the rejection of the prosecutor's approach, if the legal requirements are not met or if it has not been proven that the accused is evading criminal prosecution

and he was advertised as wanted, or regarding the admission of the prosecutor's approach. In the conclusion of the investigating judge, the factual and legal reasons cited for rejecting or accepting the prosecutor's approach are indicated.

*"Although the author of the exception states that the law does not provide what are the "legal requirements" that must be met in order to be able to authorize the completion of the criminal investigation in the absence of the accused, the Court notes that the legislator regulated in Article 291/10 paragraph (2) the conditions that must be met cumulatively in order to complete the criminal investigation in the absence of the accused (*for example: *the gravity of the offense committed, the accused must not be a minor, etc.). However, the Court notes that it actually raises a problem of interpretation and application of the criminal procedural law*" [28].

Repeated addressing with a motion to request authorization to complete the criminal investigation in the absence of the accused regarding the same person in the same case, after the rejection of the previous motion, can only be admitted if new circumstances appear that serve as a basis for finding that the accused is evading the criminal investigation and that it was not possible to identify his whereabouts.

The conclusion of the investigating judge in this case can be challenged with an appeal within 15 days from the date of the ruling, which will be examined in accordance with the provisions of the criminal procedure rules in Title II Chapter IV section 2 §.2 of the Special Part of the Criminal Procedure Code.

Conclusions. We are of the opinion that at the closing of the criminal investigation, until the parties are informed about it and the materials of the criminal case are presented, the prosecutor is obliged to draw up an order ordering the completion of the criminal investigation. This ordinance, in addition to the conditions provided for in Art. 255 of the Criminal Procedure Code, must include the analysis of the evidence (*each piece of evidence is to be evaluated from the point of view of its relevance, conclusiveness, usefulness and veracity, and all the pieces of evidence as a whole – from the point of view of their corroboration*), if this evidence was obtained by complying with the provisions of the Criminal Procedure Code, if the criminal investigation is complete and if there is legally administered evidence. The arguments in this sense are dictated by the fact that, in principle, the prosecutor decides to complete the criminal investigation, and this decision does not include the materialized aspect (this is a characteristic feature of criminal prosecution – the preponderance of the written form). The prosecutor at this stage only draws up a report informing the parties of the end of the criminal investigation.

At the same time, this view is also argued by the phrase "he has one of the following solutions" used in Art. 291 of the Criminal Procedure Code. Accordingly, the prosecutor is obliged to order by ordinance the completion of the criminal investigation, then to resolve the other aspects of the law.

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THE RIGHT NOT TO BE PROSECUTED, TRIED OR PUNISHED FOR THE SAME ACT

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Summary

The interest in this study arose due to the need to understand in the criminal process the normative framework regarding the right not to be prosecuted, judged or punished for the same act.

Starting from the need to understand the normative framework regarding compliance with the principle of the right not to be prosecuted, judged or punished for the same deed, an appropriate analysis was considered necessary. Even if there are publications and analyzes regarding the study in the criminal process of the law principle to not be prosecuted, tried or punished for the same deed, it was done by reviewing the main desired points regarding such data, set out in the ECtHR jurisprudence and of the Constitutional Court, in various scientific works, but also by authors devoted to the field of criminal procedural law, in order to obtain information necessary to be debated and analyzed in the criminal process, regarding this right.

Keywords: principle, criminal act, contraventional sanction, punishment, liability, conferred right.

Introduction. Even if we refer to the Romanian legislation, the present study can be related also to the Republic of Moldova legislation, without expressly mentioning the law text of the applicable CPC.

The research in this field and the present study, have imposed the need to offer suggestions for promoting an appropriate social response to such situations.

In this sense, ECtHR cases are an example to follow in order to respect the topic covered by understanding it in its entirety.

Methods and materials applied. Among the methods applied to the study we list the logical, comparative, analytical method. At the same time, the philosophical method is also used here to develop the study. It was resorted to a systematized and not spontaneous knowledge of the issue regarding the procedure in such situations.

Discussions and results obtained. In the CPC of Romania, this right is provided ~~for~~ in Art. 6, entitled "*ne bis in idem"*, text which provides that "No person can be prosecuted or judged for committing a crime when a definitive criminal judgment was previously pronounced against that person regarding the same act, even under another legal framework". As the text provides, the „*ne bis in idem*" principle applies exclusively to criminal acts.

If we refer to DEC. CCR [1] No. 732 of November 20, 2018, regarding the exception of unconstitutionality for the legal regime of misdemeanors, the Court stipulates about the application of misdemeanor sanctions that it is done similarly to criminal law sanctions. In this sense, the Court mentioned: "Art. 5 para. (7) from O.G. No. 2/2001 is an application of the principle of the single

application of the contraventional sanction (ne bis in idem), the subject of law can only be sanctioned once for the same contraventional act, and only one main contraventional sanction and one or more complementary sanctions can be applied. By virtue of the principle of the legality of contraventional sanctions, but also of free access to justice, the court analyzes the legality and validity of each contraventional sanction separately, also having to analyze, for each of these sanctions its appropriateness and proportionality. As a consequence, the court will be able to decide on any complementary sanction, only in this way the individualization of contraventional sanctions can be properly carried out, in compliance with the constitutional principle of the justice role, so that none of the citizens is unjustly and illegally sanctioned, every sanction applied by the state bodies through its agents must be proportional to the committed act" [1].

Related to proportionality, the Criminal Code provides prison sentences or fines for some acts. If we refer to proportionality, when the deed/fact provides the alternative of imprisonment with a fine, depending on the nature of the deed we understand the application of the lightest punishment, in these situations the fine. We are not talking about people who seek to avoid criminal liability of applying the prison sentence. The decision is for the authority and not for the people who have committed crimes. At least that's what we think, that decisions are not made in the given situation, of the pressures/influences, in order to be given a milder solution, i.e. the fine instead of the prison sentence, when the crime provides for both.

In the Case of Anghel v. Romania [2], even if the accusation was not of a criminal nature, the Court considered that "despite the nature of the sanction actually applied to the applicant, its reduced amount and the law that sanctions the respective contravention, the procedure in question can be assimilated to a criminal procedure. On that date, the acts imputed to the applicant could be punished not only with a fine, but also with imprisonment. However, in this case it was about a sanction which, by its nature and gravity, was without a doubt related to the criminal matter, Article 6 being applied, therefore, under the criminal aspect" [2].

Moving on to the specifications of the study, at the international level it is provided in Art. 4 of Protocol No. 7 of the European Convention on Human Rights – "The right not to be tried or punished twice". Para.(1) stipulates: „No one can be prosecuted or punished criminally by the jurisdictions of the same state for committing the crime for which he has already been acquitted or convicted by a final decision according to the law and criminal procedure of this state"; paragraph (2): „The provisions of the previous paragraph do not prevent the reopening of the process, according to the law and the criminal procedure of the respective state, if new or recently discovered facts or a fundamental flaw in the previous procedure are likely to affect the pronounced decision"; Art. 50 of the Charter of Fundamental Rights of the European Union provides: "The right not to be tried or convicted twice for the same crime", which applies throughout the territory of the Union and also addresses the Member States regarding the application of the principle on the territory of two or more States of the Union. In such cases the principle applies Union law. Regarding the application of the principle within a single Member State, the state will refer to the ECtHR jurisprudence. Last, but not least, we also specify Art. 54 of the Convention implementing the Schengen Agreement of 14 June 1985 between the governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of controls at common borders, signed on 19 June 1990 in Luxembourg: "A person against whom pronounced a final judgment in a trial on the territory of a contracting party, cannot be the subject of criminal prosecution by another contracting party, this becoming an incident when the first procedure was carried out in a different state than the one in which the second procedure is carried out".

The jurisprudence of the European Court provides abundant references regarding the "ne bis in idem" principle, in situations where the criminal acts involve the fine. For example, in the case of *Stăvilă v. Romania* [3], the Court decided the violation of Art. 4 of Protocol No. 7 by reopen-

ing the criminal investigation and the subsequent conviction of the applicant for a traffic offence, on the basis of the same file, without the administration of new evidence, due to the different interpretation of the relevant legislation and the re-examination of the circumstances of the case.

In the case of *Horciag v. Romania* [4], the Court mentioned that there was no violation of Article 4 of Protocol 7, as the Prosecutor's Office by ordinance ordered the non-start of the criminal investigation on the grounds that the applicant did not have discernment at the time of committing the act due to a mental illness, being confirmed the safety measure of medical hospitalization by the court. Later, as there were suspicions regarding the discernment, the criminal investigation was reopened, the applicant was examined and following the re-examination, the discernment was confirmed and the applicant was sentenced to a prison sentence.

The Court noted that "the plaintiff was subjected to a preventive measure and not a punishment, and its disposition was not preceded by an examination of his culpability in relation to the respective deed. The measure of not initiating criminal prosecution is not a definitive measure as it is subject to hierarchical control, so it cannot be assimilated to an acquittal decision. Consequently, the second procedure is nothing more than a continuation of the first procedure" [4].

Regarding the commission of several crimes in a single action, committed successively or concomitantly, we consider it appropriate to mention in addition to the case *Gradinger v. Austria* and *Oliveira v. Switzerland*, in which the plaintiffs had committed a single action that contained the content of several crimes (concomitant), the *Asci v. Austria Case* [5], when several crimes, committed through a single action, are the subject of successive proceedings, one of them being judged after the other has been definitively judged.

In fact, the applicant tried to snatch from one of the police officers (P) the driver's license that he had taken from him and hit another police officer (M.) with his car keys and with his foot.

The Court mentioned "the simple fact that an act represents several crimes is not contrary to this provision. However, when several crimes, committed through a single action, are the subject of successive proceedings, one of them being judged after the other has been definitively judged, the Court must determine if these crimes have the same constitutive elements. In the present case, the Federal Police Directorate convicted the applicant for aggressive behavior towards P., and a regional court subsequently convicted him for bodily harm to M. and attempting to resist against the legal action of the police. Even if the applicant's argument were to be accepted, according to which he was sanctioned twice for the same action – that is, for the action committed during the altercation with the two policemen – the Court considered that the constitutive elements of the crimes are distinct, given that the enforcement acts have were committed against distinct persons and do not have the same gravity. Even if it was admitted that the trial of the applicant before a single court, within a single procedure, would have been closer to the principles of a good administration of justice, this issue does not fall under the scope of Art. 4 of the Protocol No. 7, since this provision does not prohibit different crimes from being judged by different courts" [5].

In the same sense, in the case of *Fischer v. Austria* [6], „several crimes, committed by a single action, are the subject of successive proceedings, one of them being judged after the other has been definitively judged, the Court must determine whether these crimes have the same constitutive elements".

In fact, "the plaintiff fatally struck a bicyclist while driving a motor vehicle in alcoholic condition. The administrative authorities imposed a fine on the applicant for the offense of driving while intoxicated. Later, a court sentenced the applicant to six months in prison for manslaughter, noting as an aggravating circumstance the fact that the perpetrator was intoxicated. The Court considered that the applicant was judged and sanctioned twice on the basis of a single act, since the administrative offense does not differ in any essential elements from the aggravating circumstance that was held against the applicant. In addition, the Court did not consider that the reduction of the sentence by one month would have any importance, given that this forgiveness does

not change the fact that the applicant was convicted twice for the same act" [6], reason for which it was infringed Art.4 of Protocol No. 7.

The text prohibits conviction for the same deed twice, but does not prohibit the application of multiple sanctions for the same deed (eg: *case Nilsson v. Sweden*, December 13, 2005, No. 73661/01).

We note that the "*ne bis in idem*" principle must be applied whenever the person is prosecuted, judged for a crime for which the defendant was convicted and which absorbed into its content the crime for which he was subsequently prosecuted/judged. For example, in the case of *Butnaru and Bejan-Pisar v. Romania* [7] "The Court recalls that Art. 4 of Protocol No. 7 of the Convention must be understood as prohibiting the initiation of criminal proceedings or the trial of a person for a second "crime" to the extent that it is based on identical facts or facts that are essentially the same.

The guarantee established in Art. 4 above-mentioned is activated when a new criminal action is initiated and when the previous decision of acquittal or conviction already acquires the authority of res judicata. At this stage, the elements of the file necessarily include the decision by which the first "criminal" procedure within the meaning of the Convention has ended and the list of accusations against the person concerned by the new procedure. These elements will normally include a statement of facts relating to the offense for which the person has already been tried and another statement relating to the second offense of which they are charged. These statements constitute a useful starting point for the Court's examination and clarification of whether the facts of the two proceedings are identical or essentially the same (*Grande Stevens and others v. Italy*, Nos. 18640/10, 18647/10, 18663/10 , 18668/10 and 18698/10, item 220, March 4, 2014).

The Court emphasizes that it is of little importance which parts of the new accusations are ultimately retained or rejected in the subsequent procedure, because Art. 4 of Protocol No. 7 of the Convention enunciates a guarantee against new criminal action or the risk of a new criminal action, and not the prohibition of a second conviction or a second acquittal.

Therefore, the Court must examine the facts that constitute a set of concrete factual circumstances involving the same perpetrator and indissociably linked to each other in time and space, the existence of these circumstances having to be demonstrated in order to be able to pronounce the conviction or for new criminal actions can be set in motion.

Analyzing the facts of the case, the Court notes that the applicant was acquitted, in an initial phase, of the charge of hitting or other violence in relation to the incident of June 2, 2004 and, subsequently, she was convicted of robbery in relation to the same incident.

In this regard, it must be emphasized that, in relation to the stated principles, the aspect that needs to be clarified is not whether the constitutive elements of the crimes provided in Art.180 and Art.211 Criminal Code in force at the time of committing the acts, were identical or not, but to determine whether the facts imputed to the applicant in the two criminal proceedings referred to the same behavior.

In this case, the Court notes that the applicant was accused twice for the same acts of violence which were applied on the same person – D.M.M., on the same date, June 2, 2004; also note that D.M.M. had the opportunity to defend his cause as a victim. Even if other facts – namely a touch brought to the heritage of D.M.M. – were imputed to the person in question in the second procedure, it is no less true that this two procedures coincided with regard to acts of violence.

Or, in cases similar to the present case, the Court has already concluded in the sense of the existence, in essence, of the same facts, even if the two procedures in question dealt with partially different elements (see in this sense, *Gradinger v. Austria*, October 23, 1995, point 55, series A No. 328-C). Most recently, in *Asadbeyli and Others v. Azerbaijan* (Nos. 3653/05, 14729/05, 20908/05, 26242/05, 36083/05 and 16519/06, 11 December 2012), where the applicants were subject to two separate proceedings regarding a demonstration in which they had participated, the Court admitted that the crimes of which the persons in question were accused, were different in relation

to a certain number of elements, but concluded that the proceedings were overlapping regarding the essential elements of the crimes.

Regarding the *Muslija case*, in which the applicant had been the subject of two proceedings – administrative and, respectively, criminal - for hitting his ex-wife, the Court followed an identical reasoning and concluded that the facts were essentially the same since the acts of violence were, among other things, an element of both administrative misconduct and an element of the crime.

At the same time, in the *Ruotsalainen v. Finland case* (No. 13079/03, June 16, 2009), in which the applicant had been convicted twice for crimes provided by tax legislation, the Court concluded that the facts of which he was accused in hose proceedings, were in essence, the same even if the intentional element had only been retained in the first procedure.

Instead, in the case of *Pirttimäki v. Finland* (No. 35232/11, of 20 May 2014), the Court concluded that there had been no violation of Art. 4 of Protocol No. 7 of the Convention, on the grounds that the two mentioned procedures did not refer to identical facts in essence, since the factual circumstances and the parties were different.

Therefore, in this case, the Court considers that the crime of robbery with which the applicant was accused, included in its entirety the facts of the crime of hitting or other violence and that the latter crime did not contain any element that was not included in the crime. Acts of violence constituted thus the unique criminal element in the procedure for beating or other violence and an essential element in the procedure for robbery.

Finally, the European Court observes that, although the applicant invoked the authority of res judicata in the second procedure, the domestic courts did not expressly establish in this procedure that there were factual circumstances that distinguished the charge of robbery from that of hitting or other violence for which the person in question had already been acquitted.

On the other hand, European Court showed that the Appeal Court ruled by the decision of March 4, 2008, that there was an identity of facts between the two procedures in question, but that these findings could not lead, for procedural reasons, to a reopening of the procedure.

Therefore, the Court considers that the acts of violence of which the applicant was accused in the two proceedings were, in essence, the same. The Court reminds that Art. 4 of Protocol No. 7 of the Convention does not only cover the case of a double conviction, but also that of a double referral to court (*Franz Fischer v. Austria*, No. 37950/97, item 29, May 29, 2001). Thus, this provision reaffirms three distinct guarantees according to which no one: 1. can be sued, 2. judged, and/or 3. punished twice for the same deeds.

In addition, Art. 4 of Protocol No. 7 of the Convention have the purpose of prohibiting the repetition of definitively closed criminal proceedings.

It therefore results in a ban on consecutive of the criminal proceedings.

However, with regard to parallel criminal proceedings, Art. 4 above does not prohibit them. In such a situation, it cannot be said that the applicant was brought to trial several times for „a crime for which he had already been acquitted or convicted by a final judgment" (*Garaudy v. France* (Dec.), No. 65831/01, CEDO 2003-IX (excerpts)). Thus, the Court concluded in the sense of the manifestly unfounded nature of a request in a case where the national court had put an end to the second procedure when a final judgment was pronounced in the first procedure (*Zigarella v. Italy* (Dec.), No. 48154/99, October 3, 2002). However, it found a violation when the domestic courts did not put an end to the second proceedings (*Tomasoviæ v. Croatia*, No. 53785/09, § 31, 18 October 2011, Muslija, cited above, § 37, and Lucky Dev v. Sweden, No. 7356/10, §§ 59 and 63, 27 November 2014).

Applying these principles in the present case, the Court observes that the first procedure was completed with a final judgment pronounced on January 24, 2006 by the Bacau Court. It also notes that, within the second procedure, the same court issued, on March 7, 2006, a decision by which it condemned the plaintiff in the first instance. It follows that the plaintiff was convicted

in the first instance for robbery, although the acquittal for beating or other violence had already remained final.

In these circumstances the European Court considers that the applicant was tried twice for the same acts of violence [7].

We also present the case of *Tsnonyo Tsonev v. Bulgaria* [8] in which the violation of the "ne bis in idem" principle is claimed. In fact, "on November 12, 1999, a police officer made a report regarding the events of the previous night. Based on the information contained in the report, the mayor of Gabrovo City admitted that the applicant Mr. Tsonev, violated Art. 2, para. 1 of Ordinance No. 3 for maintaining public order on the territory of Gabrovo municipality and issued an administrative decree (from November 19, 1999), by which a fine was imposed. The decree was motivated by the considerations that the applicant's actions in breaking the door of Mr. GI's apartment and the aggression shown, constituted a violation of public order and a clear manifestation of disrespect towards society, which is why the applicant had to face an administrative sanction.

As a result of the entry into force of the administrative decree against Tsonev, the prosecution brought charges against Tsonev and the defendant Mr. DM, as an accomplice for causing medium bodily harm to Mr. GI in the form of the loss of two teeth as a result of the fight of November 11, 1999 – crime under Art. 129, para.(1) of the Criminal Code of the Republic of Bulgaria, as well as for the use of force to enter the victim's home – crime according to Art. 170, para. 2 of the Criminal Code.

Based on the indictment filed against the applicant, legal proceedings were initiated before the Gabrovo Court. By judgment of November 14, 2001, the Court found the defendant Tsonev guilty of causing moderate bodily harm to Mr. GI and sentenced him to eighteen months in prison; Mr. Tsonev was acquitted of the acting crimes in complicity with the defendant Mr. DM and of using the force to enter the victim's home (the crime provided by Art. 170, paragraph 2 of the Criminal Code).

The ECtHR held in particular that, by its nature, the act for which an administrative sanction was imposed on the applicant, falls within the scope of the term "criminal proceedings" within the meaning of Art. 4 of Protocol No. 7 (§ 50 of the ECtHR Decision). The applicant had been "sentenced" in an administrative proceeding, which could be compared to a "criminal proceeding" in the autonomous sense of the term under the Convention, according to the criteria set out in the Court's judgments in the case of *Sergey Zolotukhin v . Russia*, *Lauko v. Slovakia*, *Kadubec v. Slovakia*, Öztürk *v. Germany* and *Lutz v. Germany*. As a result, the criminal action against the applicant was opened and conducted for acts identical in fact to those for which he had already been sanctioned by a valid decision of the administrative sanctioning body (the mayor of the municipality of Gabrovo), which constituted a violation of the legal provisions of the "*ne bis in idem*" principle, enshrined in Art. 4 para.(1) of Protocol No. 7 to the ECHR" [8].

Conclusions. The "ne bis in idem" principle means that no legal action can be filed twice for the same cause. It also signifies the impossibility of establishing any restrictions on rights as a result of the second conviction for the same act and guarantees that a person cannot be prosecuted, judged or convicted for the same act.

By applying this principle, two effects are produced: a positive one – the final decision being able to be enforced; and a negative one – which consists in preventing the initiation of criminal proceedings.

In this sense, it is up to the criminal investigation body and the courts to analyze each individual case in order to correctly apply the "ne bis in idem" principle.

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ECHOES OF ARMED CONFLICTS. FORCED MIGRATION AND THE HUMANITARIAN CRISIS IN A REGIONAL CONTEXT

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Summary

In the context of increasing geopolitical tensions on Turkey's borders and the impact of the armed conflict in Ukraine over Moldova, this article aims to explore the dynamics of forced migration and the humanitarian crisis in these regions. Turkey, with its strategic position, faces significant challenges in managing the waves of refugees from neighboring conflict zones, such as Syria. This role of transit and host country highlights the complexity of the humanitarian crisis and the need for a multilateral approach to its solution.

On the other hand, Moldova is facing the direct and indirect effects of the conflict in Ukraine, emphasizing the humanitarian challenges and the urgent need to manage the influx of refugees. The article analyzes Moldova's initiatives to respond to these challenges, emphasizing the importance of regional and international cooperation.

Through case studies and specific examples, the paper illustrates the impact of forced migration on communities in Turkey and Moldova, highlighting integration efforts and humanitarian assistance. The article proposes concrete solutions to improve the management of forced migration and the humanitarian crisis, emphasizing the role of Turkey-Moldova cooperation, the international community and non-governmental organizations.

Keywords: forced migration, humanitarian crisis, Turkey and refugees, the impact of the conflict in Ukraine, regional cooperation.

Introduction. In a world where the dynamics of forced migration are redefining national borders and identities, Turkey and Moldova emerge as two nodal points in the complex web of human solidarity and crisis management. Turkey, with a long history of hospitality for refugees from conflict zones, has become a role model in dealing with forced migration. Through the March 18, 2016 agreement with the European Union [1], Turkey has taken a significant role in managing migration flows, reducing the number of dangerous crossings of the Aegean Sea and addressing humanitarian challenges through legislative frameworks adapted to the needs of refugees. Moldova, facing its own challenges generated by the conflict in Ukraine, is turning its attention to Turkey's experience, aspiring to take over good practices in the field of forced migration and humanitarian assistance.

Turkey has demonstrated remarkable adaptability and innovation in its migration policy, navigating through the challenges imposed by its geographic positioning and international pressures. Moldova, observing carefully, is beginning to recognize the value of the lessons that can be drawn from Turkish approaches. In this context, collaboration and knowledge sharing become essential tools for strengthening the capacity to respond to humanitarian crises and for promoting a spirit of cross-border solidarity.

To delve deeper into these aspects, references to the relevant legislation and agreements are essential. The EU-Turkey Agreement (2016) represents a landmark in migration management and international relations, highlighting both the achievements and limitations of such agreements. Equally, the evolution of the Turkish legislative framework reflects the country's commitment to the protection of refugees' rights and their integration into society [2], offering a model of good practices that Moldova could benefit from in its specific context.

Therefore, this analysis not only highlights the importance of addressing the forced migration and humanitarian crises in Turkey and Moldova, but also invites reflection on the ways in which international solidarity and cooperation can be mobilized to face the global challenges of the 21st century.

Aim of this study is to analyze the impact and responses to forced migration in the context of relations between Turkey and the European Union, as well as the influence of this phenomenon on Moldova, in the light of the recent conflicts in the region. By comparing the experiences of Turkey and Moldova, the research aims to identify good practices and lessons learned in managing forced migration and related humanitarian crises. Special attention will be paid to international and regional collaboration, assessing to what extent cross-border solidarity and cooperation can contribute to solving the challenges generated by forced migration.

Methods and materials applied. In order to explore the issue of forced migration and humanitarian crises in the context of relations between Turkey and the European Union, as well as their impact on Moldova, the research adopts a complex approach, which combines qualitative and quantitative methods. Through documentary analysis, relevant legislation, policies and strategies will be examined to identify the institutional responses developed at the level of Turkey, the EU and Moldova. The case studies will enable an in-depth understanding of the impact of forced migration on local communities, highlighting the effectiveness of different intervention measures. At the same time, semi-structured interviews with experts, government officials and refugees will provide diverse perspectives and valuable insights into existing challenges and solutions.

The analysis of secondary data, based on statistics and reports of international organizations, will facilitate the assessment of trends in forced migration and their impact. Surveys, either online or face-to-face, with populations affected by migration will help collect primary data about their experiences, needs and perceptions. Combining these methods, the research aims to build a complex picture of the studied phenomenon and identify effective and sustainable approaches to managing forced migration and associated humanitarian crises. Thus, through detailed analysis and data collection from multiple sources, the study will be able to provide concrete recommendations for improving policies and practices in the field, while promoting international and regional solidarity and cooperation in addressing these global challenges.

Discussions and results obtained. Amid the geopolitical tensions shaping the region on its borders, Turkey occupies a strategic position in managing forced migration, serving as a transit and host country for an impressive number of refugees.

His extensive experience in this field provides a unique perspective on the complexity of the humanitarian challenges generated by neighboring conflicts, such as the one in Syria. Turkey's approach, which balances hospitality with pragmatism, reflects an adaptation to internal and external pressures while navigating complex political and social dynamics.

Moldova, indirectly affected by the conflict in Ukraine, is facing a challenge of great proportions, with a significant impact on resources and humanitarian response capacity. Moldova's initiatives to manage the influx of refugees highlight a recognition of the importance of collaboration and learning from the experiences of other countries, such as Turkey, in adapting and implementing practices that can mitigate the impact of forced migration.

The interaction between Turkey and Moldova in this context highlights an important aspect of regional and international cooperation, showing that effective management of forced migration

and humanitarian crises transcends national borders and requires a concerted effort. The concrete examples from both countries, whether it is the integration of refugees or the provision of humanitarian assistance, illustrate how innovative approaches and solidarity can play a decisive role in tackling these complex issues.

In this context, the proposals to improve the management of forced migration involve not only measures at the national level, but also an intensified coordination and cooperation at the regional and international level. The role of non-governmental organizations and the international community is to support affected countries with resources, expertise and dialogue platforms, facilitating the exchange of best practices and capacity building.

Turkey is in the unique position of having direct borders with several conflict zones, which has made it a major hub for refugees fleeing violence, particularly from Syria. This situation presented the country with significant challenges, but also provided the opportunity to develop innovative and effective approaches to managing forced migration and humanitarian crises.

At the same time, the conflict in Ukraine had direct and indirect effects on Moldova, highlighting the humanitarian challenges and the urgent need to manage the influx of refugees. Moldova seeks to adapt to these challenges, drawing inspiration from the experience of countries that have managed similar situations, especially Turkey.

Turkey has approached the flow of Syrian refugees with a sense of national pride, although it has brought substantial challenges, including financial and integration issues. These difficulties are compounded by a complex demographic and a tense security situation. Ankara recognizes the need for a long-term strategy for refugee integration, moving from a fragmented policy to a well-defined national plan. This requires building consensus and ensuring that refugees are seen as part of society, not a burden.

The scale of the situation is impressive – 2.75 million Syrians are registered in Turkey, representing approximately 3.5% of the population. Initially, when the influx began in 2011, the authorities in Ankara anticipated a smaller number of people and a shorter length of stay. However, the conflict shows no signs of ameliorating, and the disarray in Europe's migration policy suggests that this situation could persist or even escalate. The emergency measures adopted so far have led to incoherent policies and a complex public discourse. Refugees face multiple difficulties, including learning the language, accessing meaningful employment, obtaining adequate housing and educational services, the risk of exploitation, and the difficulty of navigating an unfamiliar and labyrinthine bureaucracy. The recognition of the likelihood of long-term stay has begun to be reflected in educational and professional integration policies since 2016. However, the application of new policies, oriented towards gradual integration, requires more effective coordination between government agencies, which must collaborate to develop a comprehensive and consistent strategy. In addition, this year's troubling political events, culminating in the July coup attempt and its aftermath, have amplified the sense of uncertainty and instability that marks the refugee experience.

Host communities express concerns about the impact of high refugee densities on the labor market, social benefits granted to them, and the possibility of an increase in crime and terrorist activities. Acts of violence against refugees are rare and largely subdued, but sporadic episodes of unrest on social media and alarming reporting after the president's citizenship statements point to the potential for tensions. Reconciling government capacity with refugee expectations and local grievances is a complex task. Integration policies must take into account the concerns of host communities regarding the distribution of resources and be combined with effective communication strategies, along with other efforts to encourage dialogue between refugees and hosts.

The refugees, mostly Sunni Arabs, bring ethnic-sectarian complexity to Turkey, a country where the common European assumption that it would be a natural place for Syrians ignores societal subtleties. Integration in Turkey, similar to Europe, requires adaptations not only admin-

istrative and financial, but also at the level of cultural and political values. Collective memories of persecution, recent political marginalization and distrust of the president and government fuel the reluctance of minority communities. There are concerns among Alevis, Kurdish nationalists, liberals, secularists and some Turkish nationalists that the use of refugees by political leaders could alter national identity, consolidating power and shifting Turkey's position in the Middle East to a more Arab, Sunni and dominant one.

Suspicions of the Justice and Development Party's (AKP) refugee agenda are heightened by a lack of transparency, such as the unclear locations of new homes or camps and the prospects offered by citizenship. A national dialogue is essential to separate speculation from valid concerns, but the polarized climate obstructs constructive debate. Opposition parties criticize the president's unilateral decisions on refugees, fearing intentions to consolidate absolute power.

In an ideal context, Turkey would follow international standards and offer Syrians official refugee status, renouncing the geographic limitations imposed by the 1951 UN Convention. A possible offer of long-term citizenship should be well thought out, avoiding risks and ensuring - it is known that the process is fair and well defined. Integration policies should be clearly structured, promoting a smooth transition to a permanent status, with the decisive and inclusive involvement of political leaders.

The debate on a new constitution and the revision of the definition of citizenship could create a favorable framework, if the government and the opposition work together constructively. In the European context, the focus should shift from preventing migration to facilitating long-term integration in Turkey. The EU, with its restrictive refugee policy, limits Turkey's commitment to refugee rights, giving it a moral superior to European rule of law requirements. This dynamic is unfavorable for all parties involved.

Following the above, we can identify several key challenges that Turkey has faced in managing the influx of Syrian refugees:

– *Integration and financial challenges.* Adapting to large numbers of refugees required substantial resources and put pressure on the country's infrastructure.

– *Complex demography and security.* The diversity of refugees has introduced complexity into Turkish society and increased security concerns.

– *Political and social uncertainties.* Domestic political events, including the coup attempt, amplified the feeling of uncertainty.

– *The challenges of refugees*. Learning the language, accessing jobs, housing, education, and navigating a complex bureaucracy.

– *Public perception and social tensions*. The existence of tensions between refugee communities and the local population fueled by economic and security concerns.

– *Ethnic and cultural complexity.* The addition of an ethnic and cultural dimension to Turkish society, which sparked discussions about national identity.

– *The need for coordination and a national plan.* Recognizing that piecemeal approaches are not enough and the need for an integrated long-term strategy for refugee integration.

Analyzing the situation in Moldova during the first year of the war in Ukraine, it is noted that more than 650,000 refugees entered the country, many of whom chose to continue their journey west, while others stayed. This situation has put Moldova in front of significant challenges in managing the immediate needs of refugees, such as shelter, healthcare and access to education, underscoring the importance of international support and regional solidarity in addressing the forced migration crisis.

Analyzing the situation of refugees from Ukraine in Moldova, it is observed that, only in the first year of the war, the country was crossed by more than 650,000 refugees. Although some continued their journey west, many remained in the Republic of Moldova. Comparatively, at the level of the European Union, 4.2 million Ukrainian refugees are registered under temporary protection

or similar regimes [3]. This situation underlines the significant pressure that massive migration flows can have on transit and host countries.

On February 22, 2024, there were approximately 104,000 Ukrainians on the territory of the Republic of Moldova, including almost 48,000 minors, 39,000 women and 17,000 men. These figures underline the extent of the situation of refugees from Ukraine in Moldova, indicating the challenges of meeting the needs of such a diverse group [4].

Ankara had not anticipated the magnitude of the influx of Syrian refugees or the duration of the conflict. The introduction of the necessary changes for a sustainable integration of Syrians was carried out late and without a consistent approach, which complicated the integration process. This experience underlines the importance of proactive planning and adaptability in migration and integration policies [5].

The concept of "temporary permanence", introduced by the Prime Minister's advisor Ahmet Davutoğlu in December 2015, reflects the Turkish government's dilemma in establishing a clear strategy for managing Syrian refugees. This phrase captures the tension between the need to provide long-term solutions to refugees while maintaining their temporary character in Turkish law and policy. This dual approach underlines the difficulties encountered in defining and implementing a coherent integration strategy [6].

Chaotic policymaking in Turkey has left refugees to navigate the challenges of integration on their own. The lack of migration and asylum experts, as well as the absence of effective coordination between government agencies, has led to the adoption of temporary and ad hoc solutions. The establishment of the Directorate-General for Migration Management was an important step, but the rapidity of development and insufficient staff prevented a strategic and coherent approach. This situation emphasizes the need for expertise and planning in managing migration.

The authorities came to understand only in 2015 that refugees are "a long-term situation" [7]. One of the first public acknowledgments took place in September, when Deputy Prime Minister Numan Kurtulmus said most Syrians seemed destined to stay, and the government was working to increase their integration capacity [8].

By 2016, it became clear to ministries that additional staff and language and vocational training programs for refugees were needed. However, delays in building institutional capacity meant that refugees were often unable to effectively benefit from the opportunities offered by temporary protection status. This situation highlights the gap between political intentions and the practical reality of refugee integration.

The ad hoc temporary protection regime established at the beginning of the crisis was established by law in 2014 [9].

To take our analysis further, we will examine in detail the specific challenges Turkey has faced in managing the massive influx of refugees. This analysis will allow us to identify commonalities between Turkey's experience and that of the Republic of Moldova, showing that these challenges are not unique, but reflect a broader problem faced by many countries managing significant migration flows. Through this comparison, we will be able to explore possible strategies and solutions that can be applied to address these challenges effectively.

Education is a major concern in the Syrian refugee context, with the emerging risk of a lost generation. Despite the significant increase in the number of Syrian children enrolled in school in Turkey, approximately 400,000 of the 900,000 school-age children remain unenrolled, thus contravening the right to free education stipulated by Article 28 of the UN Convention on the Rights of the Child. This situation highlights the challenges in ensuring access to education for all refugee children [10].

At the January 2016 "Supporting Syria and the Region" conference in London, Ankara pledged to enroll all Syrian children in schools by the end of the 2016-2017 academic year [11].

Of the Syrian children enrolled in public schools in Turkey, approximately 125,000 face

significant challenges, with the language barrier standing out as a major obstacle. This difficulty is compounded by the lack of remedial programs to help students adapt and recover lost knowledge. This situation highlights the critical need for educational support adapted to their specific needs [12].

The Ministry of Education, NGOs, and private language projects that exist to accelerate Turkish language learning are considered chaotic and experimental [13].

Similar to Turkey, Republic of Moldova faces challenges in integrating refugee children into the education system, given the large influx of refugees from Ukraine. Problems such as the language barrier and the lack of recovery programs are also relevant in the Moldovan context. In Moldova, integration efforts can be complicated by limited resources and the need to adapt the education system to effectively support refugee children. This parallel between the two countries highlights the importance of innovative solutions and international support to address these common challenges.

The Ministry of Education and Research (MER) of Moldova has taken proactive measures to support Ukrainian refugee children, identifying schools and kindergartens for their enrollment and organizing Romanian language courses, psychological consultations, and educational and recreational activities. With the support of development partners, funds were allocated for feeding refugee children, demonstrating Moldova's commitment to providing an inclusive and supportive educational environment. These efforts reflect the country's dedication to the integration and well-being of refugee children in society.

Thus, at the moment, 1179 students in 227 institutions are enrolled in the general education system in our country. At the same time, the 222 kindergartens proposed for Ukrainian children are attended by 708 children [14].

Employment opportunities in Turkey, especially for the highly skilled and educated, led many to seek refuge in Europe by 2016 [15].

Refugees in Turkey face administrative barriers and restrictions that complicate access to the formal labor market, leading many to work in the informal sector. Although they receive support from international organizations, governments and local NGOs, there remains a need for a long-term strategy for self-sustainability that goes beyond temporary solutions and facilitates the sustainable economic integration of refugees.

Turkey has recognized the importance of integrating Syrian refugees into the workforce, granting them the right to work permits since January 2016 for those under temporary protection. However, the process of obtaining work permits is often difficult and slow, complicating refugees' access to the formal labor market and causing them to seek options in the informal sector or rely on humanitarian assistance [16].

Neither employers nor Syrians have an incentive to apply for formal employment agreements. For the employer, officially employing a Syrian means paying a minimum monthly salary (about $400), social security contributions and taxes. For Syrians, especially the low-skilled without a competitive advantage in the market, illegal employment offers advantages over citizens, as they can receive lower wages and do not pay social security contributions [17].

Between 300,000 and 500,000 Syrians working in the informal sector fear that legalizing their status could lead to job losses, highlighting the tensions between the need for formalization and the perceived risks associated with it.

Drawing inspiration from Turkey's experience, the Republic of Moldova adopted good practices to facilitate the integration of Ukrainian refugees into the workforce, simplifying employment procedures and access to banking services. This approach reflects a recognition of the importance of financial autonomy for refugees and the long-term benefits of their integration into the local economy, emphasizing the flexibility and adaptability of Moldovan policies in the face of the migration crisis.

According to the Minister of Economy, the Republic of Moldova comes to the aid of Ukrainian refugees, offering them the opportunity to work. People will only be able to get hired by presenting an identity document and signing an individual employment contract. The simplified procedure is valid throughout the state of emergency, and the completion of all documents will take place after the expiration of the exceptional situation [18].

A foreign citizen, who comes to the Republic of Moldova, if he wants to work on the labor market, must obtain a work permit. It is a lengthy procedure that requires the submission of a set of documents. For Ukrainian citizens, this procedure was cancelled, they obtain temporary protection, and they automatically have access to the labor market under the same conditions as the citizens of the Republic of Moldova. The Ministry of Labour, through the National Employment Agency, established a set of measures for these people to find a job faster. These people can obtain information about vacant jobs in the Republic of Moldova by contacting the National Employment Agency [19].

Public perception of Syrian refugees has evolved negatively over the years, especially after the massive influx of 2014-2015. Initially received with a sense of hospitality, gradually the refugees began to be seen as a burden. Polls indicate broad opposition to citizenship and a desire for more restrictive policies. This change reflects the significant challenges to the socio-economic and cultural integration of refugees into host communities.

In 2013, almost 60% of the population believed that immigration had a negative impact on tourism, work and the economy in general. A seminal 2014 study highlighted these findings, as well as cultural distance and other perceived insurmountable barriers to integration of host communities. Over 80% of respondents opposed citizenship. About 70% wanted more restrictive policies, sending Syrians home [20].

Similar to the situation in Turkey, there are segments of the population in Moldova that express dissatisfaction with the presence of refugees. This perception can be influenced by various reasons, including concerns about national resources, security and cultural impact. In a society facing its own economic and political challenges, the integration of refugees adds an additional layer of complexity. Identifying and addressing the sources of discontent requires dialogue and strategies that balance the needs of refugees with those of Moldovan citizens, promoting understanding and solidarity.

The survey on Turkish perceptions of refugees identifies, among the concerns of Turkish citizens, the decrease in job opportunities, the deterioration of trade relations in the regions closest to Syria, and the influx of refugees as a security risk [21].

Host communities often view Syrians as a potential **security threat**. There are suspicions that the jihadists, linked to radical groups active in the conflict, managed to enter Turkey, taking advantage of the country's policy of keeping its borders open. This negative perception was amplified after a suicide bomber affiliated with the Islamic State (IS) and registered as a refugee killed ten German tourists in the historic area of Istanbul in January.

Harassment and petty crime are also a cause for concern. People from diverse backgrounds, including a mother with a teenage daughter in Istanbul and a taxi driver in Hatay , expressed displeasure at the excessive presence of "Syrian youth on the streets, seemingly without occupation", highlighting cultural and behavioral differences. They noted that Syrian men, who are not subject to strict rules of conduct and drive Syrian-registered vehicles that are difficult to identify, add to the general feeling of insecurity [22].

According to a 2014 study, 62% of respondents also believe that Syrians in Turkey distort social order and moral values through criminal activities (such as violence, theft, smuggling and prostitution). However, official statistics show that the impact of refugees on crime rates is low. According to the police, only 0.33% of Syrians (33 out of 10,000) were involved in criminal activities between 2011 and June 2014. According to its governor, Syrians were involved in 2015 in

only 1.3% of all criminal cases recorded in Gaziantep, where around 220,000 live [23].

In the context of managing migrant flows, both Turkey and the Republic of Moldova face the challenge of discerning between genuine refugees and criminal elements which may use the crisis to cross borders. In Moldova, officials have identified cases of people with refugee status involved in illegal activities, mirroring a similar problem experienced by Turkey, where security has been a central consideration in managing Syrian refugees. This parallel highlights the importance of security measures and rigorous vetting in the context of mass migration.

Officials with special status within the administrative authorities and institutions subordinate to the Ministry of Internal Affairs of the Republic of Moldova, involved in the coordination of actions to manage the flows of migrants caused by the war, face daily situations in which criminal elements, disguised as war refugees, trying to enter the territory of the Republic of Moldova. During the last year alone, 34 persons with the status of persons wanted for crimes were detected from the massive flow of refugees. According to the data of the Ministry of Internal Affairs of the Republic of Moldova, the detained persons were internationally prosecuted by different states for various crimes, including fraud, terrorism, illicit drug trafficking, robbery, human trafficking, the application of violence to responsible persons and insulting police collaborators.

At the same time, there is an increase in the number of crimes related to the production/ trade of forged documents, fraud associated with the circulation of counterfeit money, etc. The Federal Criminal Police Office (Bundeskriminalamt) found in an analysis that 30% of crimes committed by refugees relate to forgery and the use of false documents [24].

Conclusion. In light of our analysis, we have identified the challenges that forced migration poses to state security in the Republic of Moldova and Turkey, while highlighting opportunities to improve responses to these challenges. We have concluded that a multifaceted approach, integrating effective security measures with a deep commitment to human rights and social integration, is key to managing these migration flows. We emphasize the need for close cooperation between affected states and international partners to ensure a coordinated response that addresses both the causes of forced migration and its impact on host communities and national security. Through this paper, we call for the adoption of policies based on data and rigorous research, which facilitate both the protection of borders and the promotion of a humanitarian approach to migration.

Adaptive policies that respond to both humanitarian needs and security imperatives must be implemented. We have identified that close partnerships between the Republic of Moldova and Turkey can play a significant role in shaping a coordinated and effective response. By improving screening and integration procedures, both nations can strengthen internal security while simultaneously providing essential support to refugees. Our conclusion underscores the importance of an approach that balances security pragmatism with compassion to navigate the complexity of migration in an interconnected global context.

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nuing influx of Syrian refugees and their spread across the country, underlining the need for a comprehensive social and economic integration strategy. See Crisis Group Europe Report No.230. The Rising Costs of Turkey's Syrian Quagmire, 30 April 2014.

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9. Due to the geographical limitation it imposes on its adherence to the 1951 UN Convention Relating to the Status of Refugees, Turkey does not give official refugee status to citizens of countries not in the Council of Europe. It holds that unrestricted application of the convention would attract crippling numbers from its turbulent neighbourhood.
10. Article 28 reads: "1. States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular: (a) Make primary education compulsory and available free to all …" https://www.unicef.org/moldova/media/6116/file/with%20Kids'%20drawings%20ROM.pdf.
11. Turkey's statement reads: "The Republic of Turkey and its international partners committed to the aim of providing education to every Syrian refugee child by the end of the school year 2016/17. The Republic of Turkey is already providing education to 310,000 Syrian children and has committed to enrolling 460,000 Syrian children by the end of this school year. In order to achieve this objective, stronger and urgent support for Syrian children's education is needed".
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THE PARTICULARS OF DETECTING THE ELEMENTS OF THE CRIME AND INITIATING CRIMINAL PROSECUTION IN THE CASE OF COMMITTING THE CRIME OF ORGANIZING ILLEGAL MIGRATION

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Summary

The article focuses on the specific aspects of identifying the constituent elements of the organization of illegal migration and establishing reasonable suspicion for the initiation of criminal prosecution in these cases. These objectives are of crucial importance as they initiate a proper criminal investigation and have significant legal and social significance.

Prompt initiation of criminal prosecution contributes to the correct resolution of the criminal case, especially when it is investigated on the basis of recent information. The delay in the reaction of the criminal investigation bodies to the signals regarding the organization of illegal migration can lead to the loss of important evidence. Also, the initiation of criminal prosecution provides the legal basis for the application of preventive measures, the conduct of expertise and other criminal prosecution actions. Given the latent nature of the crime, knowing the particularities in identifying the signs of the crime in cases of organizing illegal migration allows law enforcement bodies to react immediately and effectively to identify migrants and criminals, as well as to establish all the circumstances of the case, including the conduct of initial procedural actions and obtaining the necessary information.

Keywords: elements of the crime, organization of illegal migration, criminal investigation body, initiation of criminal investigation, reasonable suspicion.

Introduction. In the current context, migration has reached unprecedented levels, fueled by a variety of complex factors. A significant proportion of the migratory flow goes to industrialized countries and is generated by armed conflicts, famines, natural disasters, human rights violations and poor economic conditions. These phenomena are influenced by demographic, economic, technological, political and developmental factors.

The organization of illegal migration represents one of the most serious forms of cross-border crime, having the potential to destabilize the socio-economic balance and even the peace and security of states. This phenomenon can have serious consequences for demographic, ethnic and cultural diversity, putting pressure on social protection and public health systems and exceeding the capacity of the legal labor market.

It is essential that the authorities tackle illegal migration with a coherent and effective strategy to manage this problem adequately and to counter the criminal activities associated with it. Therefore, states are obliged to take serious measures to identify the signs of the crime of organizing illegal migration as soon as possible and to initiate criminal prosecution within a reasonable time, so that they can fight and prove the guilt of the criminals, identify the victims of this crimes and the ways of committing them, in order to take appropriate security measures.

Applied methods and materials. Theoretical, normative and empirical material was used in the development of this publication. Also, the research of that subject was made possible by applying several scientific investigation methods specific to forensic theory and doctrine: the logical

method, the method of deduction and induction, the method of comparative analysis, systemic analysis, etc. The theoretical-legal basis of the scientific article includes the normative regulations related to the procedural-criminal and forensic doctrine in the field aimed at investigating the organization of illegal migration.

Obtained results and discussion. In accordance with the provisions of para. (1) of art. 274 of the Criminal Procedure Code, the criminal investigation body or the prosecutor notified in the manner provided in art. 262 and 273 of the Code of Criminal Procedure orders, within 45 days, by ordinance, the initiation of criminal prosecution if, from the content of the report or the findings, there is a reasonable suspicion that a crime has been committed and there is no from the circumstances that exclude criminal prosecution, informing about it the person who submitted the notification or the respective body.

According to paragraph (1) of art. 262 of the Criminal Procedure Code, the criminal investigation body may be notified of the commission or preparation for the commission of a crime provided for by the Criminal Code by: 1) complaint; 2) report; 3) self-denunciation; 4) direct detection by the criminal investigation body or prosecutor of the reasonable suspicion regarding the commission of a crime.

In accordance with the provisions of para. (2) of art. 273 of the Code of Criminal Procedure, the investigative bodies have the right, under the terms of the Code of Criminal Procedure, to detain the perpetrator, to collect the criminal bodies, to request the necessary information and documents for the detection of the crime, to summon persons and obtain statements from them, to proceed to the assessment of the damage and to carry out any other actions that do not suffer postponement, with the preparation of minutes in which the actions carried out and the circumstances found will be recorded.

Resulting from the provisions of para. (2) of art. 273 of the Criminal Procedure Code, the ascertaining bodies, carrying out the actions assigned to them according to the law, draw up minutes of ascertainment. In doctrine, but also in practice, there is no uniform opinion regarding the notification form drawn up by the ascertaining body. We support the opinion of those authors who consider that the ascertaining body for reporting to the criminal investigation body will draw up a report. [7, p. 110] However, this particular form emerges from the provisions of art. 273 para. (2) Criminal Procedure Code. Respectively, I have the right to notify the criminal investigation body about the commission of the crime, drawing up, in this sense, a report.

It is interesting to note that, in the judicial practice of the Republic of Moldova, no cases were registered in which the persons filed a self-report regarding the commission of the crime of organizing illegal migration. However, the other forms of notifications are frequently encountered in criminal prosecution practice. This observation suggests that people involved in organizing illegal migration are reluctant to admit or denounce their own illegal actions. This may be due to fear of legal repercussions or other negative consequences associated with their involvement in illegal activities.

On the other hand, notifications from other sources, such as information provided by victims of illegal migration (complaints) or by other authorities involved in the investigation (denunciations, self-reports, minutes of investigative bodies), are more frequent and play a crucial role in initiating and conducting criminal investigations. It is important that the authorities continue to encourage collaboration and the provision of information from citizens and other entities involved in combating illegal migration, in order to ensure an effective and comprehensive approach to this problem in the Republic of Moldova.

"In order to start the criminal investigation, it is necessary for the criminal investigation bodies to know about the commission of the crime and to be notified according to the law. The notification contains both the information element and the legal basis for carrying out the research activity. The notification is the starting point of the criminal investigation, without which it cannot begin". [9, p. 104]

As sources of information in order to detect cases of organizing illegal migration, which, subsequently, can serve as a basis for notifying the criminal investigation body and starting the criminal process, as well as the actual criminal investigation, can be considered: the announcements about employment in the labor field; advertisements in newspapers, magazines, on television, those broadcast on the radio; agencies that offer self-employment and tourism services; employees of advertising companies and those who deal with renting out housing (houses, villas or apartments); the potential migrants themselves; databases of consular sections within embassies and consulates, etc.

The special investigative measures, which can be carried out before the start of the criminal investigation, should not be underestimated either, namely their results, in most cases serve as evidence prior to the criminal investigation and by carrying them out further, essential evidence is administered to prove the guilt of the active subjects of the crime.

From the analysis carried out, we can see that, when investigating the crime of organizing illegal migration, it is necessary to establish the following circumstances specific to this fact:

a) organizing the arrival and stay of foreign citizens on the territory of the Republic of Moldova. Here it is necessary to establish: the method of crossing the state border by foreigners, the route taken by them, the source of financing, the people who helped them complete the documents and travel tickets, the employment contracts concluded, etc. ;

b) in what manifests the illegal entry or stay on the territory of the Republic of Moldova of foreign persons. In this circumstance, it is necessary to clarify: the place and time of the illegal crossing of the state border, the period of the foreigner's stay on the territory of our country, the reason for the lack of the appropriate documents or the extension of the temporary visa, etc.;

c) in which the illegal transit of the territory of the Republic of Moldova by foreigners manifests itself. Here will be established: which is the foreigner's country of origin, where does he come from, which countries he transited, which is the country of destination, the date of entry into the state, the reason for the lack of documents that allow entry into our country or in general the lack of them, etc. [8, p. 22]

In order to establish the mentioned circumstances, as well as with a view to an objective, complete investigation and under all aspects of the case, the criminal investigation body notified of the commission of a crime of organizing illegal migration and from which a reasonable suspicion results, starts the criminal investigation and proceeds to the investigation proper, within which they will carry out the corresponding criminal investigation and special investigation actions.

"Starting the criminal investigation without delay contributes to the just resolution of the criminal case, especially when it is investigated on fresh tracks. On the contrary, the delayed reaction of the law enforcement agencies to the information regarding the commission of the crime can be followed by the loss of serious evidence during the investigation of the case. The initiation of the criminal investigation constitutes the legal basis for the application of preventive measures and the execution of criminal investigation acts". [6, p. 98] In the Povestca case against the Republic of Moldova,[5] the Court recalls that, "*although there may be obstacles or difficulties that prevent the progress of an investigation in a particular situation, in general it may be considered essential that the authorities launch an investigation promptly to maintain public confidence in their adherence to the rule of law and to prevent any appearance of collusion or tolerance of wrongdoing*."

CtEDO în cauza Tomac c. Moldovei „(...) *consideră că întârzierea de peste un an și cinci luni pe care a avut-o până când procuratura a inițiat urmărirea penală este incompatibilă cu obligațiile procedurale care decurg din articolul 2 al Convenției*" [4] „*Tergiversarea de mai mult de doi ani înainte de a porni urmărirea penală este incompatibilă cu obligațiile procedurale în temeiul articolului 3 din Convenție (...)*".[3]

In the following, we will refer to the activities undertaken by the ascertaining body up to the notification of the criminal investigation body, to the aspects that need to be ascertained in order

to establish the reasonable suspicion of committing the crime of organizing illegal migration, etc.

When the investigative body has information and data about the preparation, commission or alleged commission of the crime of organizing illegal migration, it will submit a report addressed to the head of the investigative body, in which it will describe the facts and information in its possession and, in view of the investigations necessary, will request the registration of this report in the Registry of other information regarding crimes and incidents, also called Registry no. 2.

Until the fact is registered in Register no. 2 it is not allowed to carry out ascertainment actions, or, referring to the procedural-criminal norm of art. 55 para. (4), if there are indications of the crime, the criminal investigation body, simultaneously with the registration of the notification about it, starts the criminal investigation process and, guided by the provisions of the Code of Criminal Procedure, carries out criminal investigation actions in order to discover it and fix it the evidence that confirms or refutes the commission of the crime, takes measures in order to ensure the civil action or a possible confiscation of the illegally acquired assets. The same conditions are imposed on the ascertaining body, because it is a procedural subject and according to para. (2) of art. 273 Criminal Procedure Code "the ascertaining body has the right, under the conditions of this Code...". In other words, any investigative action will be carried out under the terms of the Criminal Procedure Code only after the fact has been registered in the Registry of other information about crimes and incidents.

After registering the information in Register no. 2, the representatives of the ascertaining body carry out the actions provided for in para. (2) of art. 273 of the Criminal Procedure Code, with the preparation of minutes regarding the findings. For clarity, we will divide the minutes regarding the findings into two categories: a) minutes regarding the findings (for ascertainment actions) and b) minutes regarding the findings (for hearings).

The minutes of ascertainment (regarding the acts of ascertainment - it is considered the ascertainment of the facts and actions taken by the ascertaining body (for example: collection of documents, on-site investigation, etc.). It should be noted that, any action carried out by the ascertaining body, the latter will draw up this report. At the same time, following the investigations, the ascertaining body will draw up a report for referral to the criminal investigation body in which it will describe the findings, the analysis of the administered evidence, etc.) includes: the date and place of preparation, the representative of the ascertaining body and who exactly (in whose person?), his function, the degree, the participants, the interpreter (if necessary), the specialist, the place where the report is drawn up, the starting time and the finishing time action. After finishing the action, the participants have the right to make objections and statements in connection with the preparation of the minutes, aspects that are included in the respective minutes. At the same time, the report will mention the objects and documents picked up, examined, etc., which will be attached to it. Afterwards, the minutes will be read and signed by all participants. This report will be drawn up in compliance with the provisions of articles 163, 260, 261 and para. (2) of art. 273 Criminal Procedure Code.

The minutes regarding the findings (for hearings) must include: the date and place of drawing up, the representative of the finding body and who exactly (in whose person?), his function, degree, the place where the minutes are drawn up, the start time and the time of the end of the hearing, the participants, the interpreter (if necessary), the specialist, the name and surname of the person being heard, when he was born, his domicile and occupation, the act by which he was identified, the statements of the person being heard. In the respective minutes, mention will be made regarding the collection of documents or objects presented by the person being heard, by specifying their quantity, particularities, characteristics and attaching them to the minutes. In the same way, the minutes will mention the objections and explanations of all the participants, if they persist. The respective procedural act will be signed by all participants in the action.

It is recommended that at the stage of examination of the materials registered in Register no. 2 (that stage is considered the pre-trial stage, i.e. until the notification of the criminal investi-

gation body), to hear the employees of the General Inspectorate for Migration, the employees of the General Inspectorate of the Police, the border police officers who detected the fact of illegal migration, so that be possible to form a real picture of the circumstances of the committed act. Here, special attention will be drawn to the established circumstances, the place of detention of the migrants, the objects and documents they had on them, when and where they entered the Republic of Moldova, etc.

When illegal migrants will be heard, they will be heard regarding the following aspects [10, p. 124; 11, p. 221]: when, for what purpose, in what way (model of means of transport, on foot, etc.) and through what crossing point did they enter the Republic of Moldova, or in what way did they cross the state border illegally; how many times he visited the Republic of Moldova, for what purpose, how he entered and left the country, etc.; how long he was in the territory of the Republic of Moldova, where and with whom he stayed during this time; when and where he completed his documents for entering the Republic of Moldova, including for the completion of visas, to which bodies he submitted the appropriate documents; did someone facilitate him crossing the state border and who exactly, as well as what this facility consisted of; in what relationships and if he knows the identity of the person who helped him cross the state border of the Republic of Moldova, who accommodated him, does he have connections with the collaborators of the law enforcement bodies and which ones, what are his contact details, address, etc.; who and how much bought the plane tickets, train tickets, etc. and from what sources; does the illegal migrant have any receipts, vouchers, tickets, etc. regarding the transport with which it arrived in one location or another, in one country or another, etc.; after crossing the state border of the Republic of Moldova, where exactly and with whom did he stay and for what specific reason in this place and not in another; with how many financial means he entered the country.

If the illegal migrant has a very small amount or generally has no financial sources, then he will be asked from which sources he plans to rent housing, from which sources he will feed himself, etc. In addition to that, he will ask himself if someone promised to support him, for what reason, what is the identity of this person, phone numbers, address and others; notified the competent bodies (General Inspectorate for Migration) about his arrival in the Republic of Moldova, if not for what reason; does the interviewed person have a residence permit, if so who handed it to him or where did he pick it up; if he held or holds a residence permit, why did he not leave the Republic of Moldova when it expired; for what reason does he not have appropriate documents for entering the Republic of Moldova; with whom he agreed to meet once he crossed the border, who promised to provide him with transport, accommodation, food, etc.; what he did and with whom he was accommodated from the moment of entering the Republic of Moldova until his detention; to whom he paid for the rental of the living space; who brought him food and basic necessities; with whom he lived and their nationality; if he was engaged in the labor field during the respective period; to whom; who issues his salary; where he worked and what he did at work; what does his activity consist of; signed any contracts or documents related to employment and with whom, in what place (office, apartment, etc.); how and with what he got to work; admits or not that he illegally entered the territory of the Republic of Moldova; he wanted to reach the Republic of Moldova or it was only a transit country; which is the country of destination; through which crossing point or through which place of the state border was he going to arrive in Romania; who was to meet him; with whom he talked; through which means of communication do they communicate with the people who organized their illegal migration, etc.

At the same time, the ascertaining body will request the appropriate information from the General Inspectorate for Migration to find out if the person has applied for asylum, for what reason, where he is staying, on the basis of which documents his legal entry into the country took place, who called him, what documents did the person present in order to complete his documents and the necessary visa to cross the state border, etc. Copies of the entire file will be requested from the General

Inspectorate for Migration, in order to examine and analyze all submitted documents. If there are suspicions about these documents, a technical-scientific finding will be ordered in this regard.

At the same time, information will be requested from the General Inspectorate of the Border Police regarding the migrant's crossing of the state border (if he has legally crossed the state border). Obtaining this information, they will be analyzed and attached to the material. Thanks to this information, we can obtain data regarding the date, place, border crossing point, by whom he was accompanied or with whom he entered the country, the model of the means of transport, who was behind the wheel of the car, who else was in the car. These persons will later be summoned and heard regarding these aspects. It is not excluded that the person accompanying him or the driver of the means of transport may be one of the participants in the organization of illegal migration. If, according to the database related to the crossing of the state border, some data is missing that the migrant crossed the border, these become important data denoting that the migrant entered the country illegally through the green sector of the border (crossed the state border illegally).

Information will be requested regarding the documents submitted for the issuance of the visa, for what period, for what purpose, etc. We can obtain this information from consulates and embassies, which are subordinate to the Ministry of Foreign Affairs and European Integration. The documents obtained will also be analyzed and examined, so that it will be studied whether the person presented truthful documents, the purpose of issuing the visa (tourist, study, work, business, etc.) and other data relevant to the investigation.

In the same way, the acts, documents, vouchers, mobile phones, other means of communication, payment and transfer receipts, powers of attorney and other documents and objects will be collected, which, after being examined, can be recognized as criminal bodies and thanks to them, they will find out the circumstances of the crime, the identification of the perpetrators, etc.

In the case of the detention of migrants near the border or immediately after crossing it illegally, a report will be drawn up through the documents of ascertainment, in which it will be mentioned: the number of migrants, where they were detained, by whom, what objects and documents they had on yes, how much money, how much food, how the migrants are dressed, the traces of crossing the border, etc. This report will be similar to the on-site research report. The respective ascertainment action, in the given case, will also be similar to the on-site investigation, being carried out according to the tactics corresponding to this procedural action.

All documents and objects found on illegal migrants, as well as those obtained at the request of the ascertaining body (from the General Inspectorate of the Border Police, from the General Inspectorate for Migration, etc.) will be examined, and a record of findings will be drawn up in this sense. This report will be similar to the examination report. Particular attention will be paid to: the dates in the passports detected and seized (to see through which countries the migrant crossed, whether he crossed legally or not, etc.), powers of attorney (if they persist, in whose name they are issued, which is the notary, etc.), boarding passes, checks or invoices for the transfer of financial means (who is the sender, who received, when the transfer was made, etc.), the mobile phones they have in their possession (for establishing phone numbers from the phone book, to whom they belong, when the outgoing and incoming calls were made, if at the time of the crossing or immediately after the crossing someone was called and who specifically, etc.), the drafts picked up, business cards, etc.

At the same time, the persons suspected of committing the act of organizing illegal migration will be heard, in order to establish whether they are involved in the commission of this act and to find out their initial position in relation to the act that took place and in relation to illegal migrants . They will be asked about the following aspects [10, p. 135-136]: when, where and under what circumstances he organized the illegal migration; when, where and under what circumstances did he meet the illegal migrant and if he knows him, as well as what kind of relationship they are in; under what circumstances did the crossing of the state border take place; if he did

not organize the entry or transit of the Republic of Moldova, then what does he know about these circumstances, who organized the passage, etc.; for what purpose and under what conditions was the help of the migrant manifested, namely, what actions did he undertake in view of it, what was his attribution, what was the amount of the amount received or that he was supposed to receive for his services; who asked him to perform these actions, who paid him or promised to pay him for the services rendered; what documents do illegal migrants have, where are these documents located; through which place of the state border did the migrants cross, who brought them to the border, under what conditions; in which country of destination the migrants had to arrive, who had to receive them once they arrived in Romania and through which point of the state border they had to cross; what means of transport they used to transport illegal migrants; what phone numbers did they use, who did they talk to, who are their accomplices; where the illegal migrants were accommodated once they arrived in the country, etc.

There are situations in which illegal migrants can use the Republic of Moldova not as a transit country, but as a destination country, either as a transit country but not to leave the territory of the Republic of Moldova for a longer period of time. In such cases, illegal migrants can work (legally or illegally) to earn money to ensure their existence. In the respective cases, it is necessary to hear the manager of the company regarding the employment of the migrant, did he know that they are illegally on the territory of the Republic of Moldova, since when he hired the migrant, who asked him to hire him, how many hours he works, what is his salary pays, where he resides, what documents he has, checked the activity of the enterprise by employees of the Main State Fiscal Service, the General Inspectorate for Migration, the police, etc., during the period when the migrant was working at the enterprise and other important circumstances for the case. At the same time, the chief accountant, the head of the human resources department, the company administrator and other persons with responsible positions will be heard. They will be heard regarding the same aspects, as well as regarding the date of employment, the salary granted to the migrant, the method of payment of the salary, whether or not there is an employment order, what the migrant's work consists of, etc.

If migrants are found in an apartment, its owner will be questioned on the following aspects: since when has he been renting out the apartment, does he have the appropriate license, how did the migrant find this apartment, did someone ask him to accommodate the migrants, did he know that they are illegally in the territory of the Republic of Moldova, who pays for the rent, in what way (cash, by transfer), how was the agreement with the migrants (if the migrants do not know Romanian, Russian or English, or the owner does not know the spoken language of migrants, who was translating, etc.), how many migrants were accommodated, were migrants previously accommodated until the moment of finding the respective migrants, by what means did the announcement regarding the provision of apartment rental services be made, who called and from what phone number for the migrants' accommodation, the owner checked the identity documents of the migrants, concluded the rental contract, who still has keys to the apartment, who pays the communal services in the appropriate period, etc.

At the same time, the real estate book will be requested to be examined in order to ascertain who else is registered in the respective apartment and if there are other persons on the record. Neighbors will be interviewed to find out when the migrants have been staying, who visited them, how many times they met the migrants, what they told them about their accommodation and stay in the territory of the Republic of Moldova, as well as other important aspects just in case.

In other situations, when the migrant or immigrant has violated the term of stay on the territory of the Republic of Moldova, copies of the respective contravention files, court decisions, as well as other materials relevant to the case will be collected. They will be examined and the information in them may contain data that can later be used to detect clues to the crime of organizing illegal migration.

At the same time, the indicators of the respective crime can be established in another criminal case that is being examined. In this case, the criminal file will be severed in order to investi-

gate the given crime. Either, in a criminal case, some special investigative measures are carried out (interception of telephone conversations or others) and as a result of these, indications of the commission of the offense provided for in art. 3621 Criminal Code.

Of course, in order to detect the signs of the crime of organizing illegal migration, other investigative actions will be undertaken, as well as special investigative measures in this regard.

Once the indications of the respective crime have been detected, the ascertaining body will notify, in the order provided by art. 273 Criminal Procedure Code, the criminal investigation body that, by ordinance, will start the criminal investigation and will carry out the criminal investigation actions and the special investigative measures corresponding to the investigation.

Conclusions. The activity of the investigative and investigative body plays a crucial role in identifying the reasonable suspicion regarding the commission of the crime of organizing illegal migration. The effective and conclusive collaboration of these bodies is essential for the successful identification of signs of crime and for the prompt initiation of criminal prosecution. The latter represents the starting point of the investigations and provides the legal basis for the application of preventive measures, the conduct of expertise, the attribution of procedural quality to the persons guilty of committing this crime and other criminal prosecution actions.

Knowing the specifics and peculiarities in identifying the signs of crime is crucial for an effective initial and subsequent investigation. At the same time, it is essential to respect the principles of officialdom and fundamental human rights and freedoms during the entire investigation process. Therefore, close cooperation between the investigating body and the prosecuting body is essential to streamline the investigative process and to ensure that the rights of all parties involved are respected throughout the criminal justice process.

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CONDITIONS AND PROCEDURE FOR REIMBURSEMENT OF PROCEDURAL EXPENSES IN MISDEMEANOR PROCEEDINGS

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Summary

Often in contentious relationships, parties seek only the restitution of damages, while applying penal and misdemeanor sanction measures typically remains a subsidiary matter, which most often provides only moral satisfaction to the victims.

At the same time, in providing such satisfaction, the state incurs significant expenses related to the penal or misdemeanor procedures it is obliged to conduct. Although for a long time, the issue of reimbursing procedural costs was not a subject of discussion, in recent decades, multiple discussions have been initiated, and a judicial practice related to the recovery of penal procedural expenses has consistently emerged, and later, that of misdemeanor procedural expenses as well.

Key-words: procedural expenses, misdemeanor proceedings, recovery of procedural costs.

Introduction. As rightfully stated, legal liability is the keystone of jurisprudence, and the ultimate goal of legal liability is to restore the parties to the position they were in prior to the emergence of the contentious legal relationship; therefore, the issue of restitution of damages inherently represents a matter of great importance.

It must be noted that in specialized literature, particular attention has always been given to issues of civil liability, administrative liability, criminal and misdemeanor liability, and in this context, to subjects dedicated to the manner and conditions of restitution of damages resulting from civil, criminal, misdemeanor, and other such damages [3, p.123-135].

Discussions and results obtained. However, regrettably, less attention has been paid to the issue concerning the reimbursement of expenses incurred by the state concerning the examination and adjudication of criminal and misdemeanor cases. Yet, the expenses borne by the state in the investigation and prosecution of a crime or misdemeanor are costs causally linked to the criminal act committed, whether it is a felony or a misdemeanor.

This subject is particularly debatable in connection with the commission of misdemeanors.

There are still persistent opinions that the issue of compensating expenses related to the establishment of misdemeanors cannot be addressed because they are insignificant and unimportant [2, p.121].

First and foremost, in discussing our subject, we will start with a clarification regarding the

nature of procedural expenses, also referred to as court costs. Although these represent expenses largely borne by the state (state budget) in connection with the examination of a misdemeanor case, it is necessary to distinguish them from the expenses borne by the parties in the process, also related to this process, as well as from the expenses incurred by the state to maintain public order and security, which are not procedural expenses.

Thus, throughout the activity of the public authorities involved in ensuring and maintaining the rule of law, they incur a series of expenses.

From this series of expenses, we can distinguish those related to the remuneration of personnel, maintenance of service spaces, procurement and maintenance of equipment and mechanisms used in the service process (vehicles, weapons, special means, etc.), personnel training, as well as other categories of expenses, all of which are characterized by the fact that they do not directly result from the commission of the offense or misdemeanor, and are not directly related to the number or content of the offense or misdemeanor. Here, it should be noted that regardless of whether the offense or misdemeanor has been committed or not, these expenses will still be borne by the state (budget).

At the same time, the state also incurs other categories of expenses that would not have occurred if the offense or misdemeanor had not occurred. We refer to expenses related to the consumption of fuel for the police crew to travel to the scene of the incident. We refer to expenses related to various consumables in the process of investigating the scene of the offense or misdemeanor. We refer to expenses related to conducting various expertise, translations, requests, and information acquisitions. We refer to expenses related to the services of translators, and interpreters. We refer to expenses related to the lifting and storage of goods, including vehicles, weapons, explosives, and other categories of goods, including when their storage requires special conditions. We refer to expenses related to the detention of detained and arrested persons. We also refer to other categories of expenses, all of which are characterized by the fact that they are strictly related to the commission of the offense or misdemeanor, and moreover, they are directly dependent on this fact. In other words, if the offense or misdemeanor had not occurred, these expenses would certainly not have taken place.

The issue of repairing (recovering) these expenses is the subject of an action by the state against the guilty perpetrator.

However, numerous issues arise here because, until now, the procedures and conditions for recovering these expenses have not been appreciated. Judicial practice is not uniform in this regard, and in some cases, even confusion arises.

The first of the issues we consider necessary to address is related to the basis of liability.

In practice, we encounter many cases where the applicant for the recovery of expenses incurred in misdemeanor proceedings seeks restitution invoking the grounds of tort liability. At the same time, the legislator even dictates the necessity of identifying a clear basis for holding the perpetrator of the offense or misdemeanor responsible, yet does not limit liability solely to tort. In this regard, Article 776 of the Civil Code establishes obligations arising from contract, tort (delict), and from any other act or fact capable of producing them under the conditions of the law [1, art.776].

Therefore, inducing grounds for tort liability for the recovery of expenses related to the examination of the misdemeanor case does not represent a successful solution. Firstly, this does not constitute a situation of damage. Secondly, its amount is not always within the perpetrator's control. Thirdly, concerning these expenses, we cannot invoke other characteristics of tort liability, such as the possibility of applying negotiation for the form and amount of compensation, as

well as exoneration from liability.

Thus, we must deduce that such liability cannot be based on direct tort, since misdemeanor procedural expenses are not the result of the direct act of the misdemeanant, but merely its cause.

Therefore, we will refer to the fact that the misdemeanant's liability for misdemeanor procedural expenses represents expenses that are incurred as liability based on the following conditions:

– There is a misdemeanor offense, and the person is found guilty of committing this misdemeanor offense;

– Procedural expenses are incurred in the misdemeanor proceedings and result from the misdemeanor proceedings;

– The procedural expenses are necessary for the misdemeanor proceedings;

– The offender has not compensated or personally borne these expenses.

– Continuing, we will briefly outline the essence of each of these conditions.

Every person against whom misdemeanor proceedings have been initiated is entitled to benefit from the effects of the presumption of innocence. Thus, the person suspected of committing a misdemeanor cannot be obliged to bear the consequences of a misdemeanor sanction until they have been found guilty, nor can they be obligated to any other obligations, including pecuniary obligations, resulting from the acknowledgment of guilt in committing the misdemeanor.

Therefore, until the person is found guilty of committing the misdemeanor, they cannot be imposed with the expenses related to the procedural steps taken against them.

Furthermore, if it is found that the person is not guilty of committing the misdemeanor, or if the misdemeanor does not exist (lack of misdemeanor elements), all expenses incurred by the authority examining the misdemeanor case will remain the responsibility of the state (local) budget. At the same time, if it is found that the report of the misdemeanor case was intentionally false or abusive, the person who made it may also be required to bear the burden of recovering these expenses.

Regarding the second category of conditions - that procedural expenses should be incurred only within the misdemeanor proceedings and as a result of the misdemeanor proceedings - we will refer to the fact that procedural expenses can be borne not only by the authority examining the misdemeanor case but also by the parties to the proceedings. For this reason, it must be noted that only expenses incurred within the proceedings can serve as the subject of restitution by the misdemeanant. Thus, expenses incurred before the misdemeanor proceedings, as well as those incurred after the conclusion of the proceedings, cannot be identified as misdemeanor procedural expenses and therefore cannot be charged to the misdemeanant.

Therefore, expenses for conducting expertise to identify the technical condition of the damaged vehicle and certain circumstances of the accident, to establish conviction for the victim regarding the correctness of the decision adopted by the investigating officer, including determining whether there are grounds for appealing the case, cannot be considered procedural expenses once the misdemeanor proceedings have ceased. These expenses, although causally related to the misdemeanor, once incurred outside the misdemeanor proceedings, will not be subject to a duty of the misdemeanant to recover these expenses.

Regarding the third condition - that procedural expenses must be necessary within the misdemeanor proceedings, it should be mentioned that the obligation of the misdemeanant to bear procedural expenses is not without limits. They can be obliged to reimburse only those expenses that could not have been avoided and without which the finality of the proceedings could not have been achieved. For example, in the process of examining a case of a road traffic accident, the

investigating officer is required to order technical automotive expertise, which entails expenses. Such procedural action must be carried out by the investigating officer because both participants in the accident claim compliance with traffic rules, and neither of them admit to committing any violation resulting in the accident. Following the expertise, if a violation of traffic rules by one of the participants in the accident is established, the investigating officer, in addition to the imposed sanction, also determines the obligation to reimburse the expenses for conducting the expertise. These expenses, in the circumstances of the case, were necessary to establish the truth. At the same time, in the absence of a statement from the participants in the accident regarding the extent and significance of the damage caused by the accident, the investigating officer is not entitled to order a mereological expertise of the condition of the transport unit, as such procedural action is not necessary and justified for this case, and therefore the expenses related to conducting such expertise cannot be charged to the misdemeanant.

As for the fourth category of conditions - that the misdemeanant has not compensated or personally borne these expenses, we refer to the situation where, within the proceedings, alongside other parties, the misdemeanant may bear certain procedural expenses. These include expenses for legal representation, expenses related to conducting expertise, costs for administering evidence, and others. All these expenses remain procedural expenses but remain solely the responsibility of the misdemeanant. They cannot be compelled to recover them. Therefore, although classified as procedural expenses, they cannot serve as the subject of a recovery order.

At the same time, it is not excluded that the misdemeanant may also be entitled to recover certain expenses. We refer to those procedural expenses borne by the misdemeanant that justify certain claims of theirs

To illustrate the same traffic accident scenario, we can also consider the situation where one of the participants in the accident, being the sole suspect in the commission of the misdemeanor and having borne the expenses for the technical automotive expertise, thereby demonstrating that the other participant in the accident also violated traffic rules, which caused the accident. Therefore, they may claim proportional compensation for the expenses incurred in conducting this expertise.

Moreover, during the misdemeanor proceedings, the misdemeanant may personally compensate procedural expenses. For example, Government Decision No. 557 of 2018 establishes that the person whose vehicle has been subject to towing and parking may compensate the expenses for the evacuation and storage of the vehicle directly to the economic agent who assisted the police in the vehicle evacuation process [4].

From here, the methods of compensating misdemeanor procedural expenses emerge, where the misdemeanant or another participant in the misdemeanor proceedings can achieve this restitution procedure mainly in two ways:

– Voluntary procedure,

– Forced execution procedure.

The voluntary execution procedure is characteristic of all legal systems, including those of the European Union [2, p.124]. It involves the voluntary actions of the person obligated to compensate for the value of procedural expenses by making payments, usually monetary, into the account of the direct beneficiary or the authority managing the misdemeanor case, which in turn is entitled to transfer the compensated amounts to the rightful recipient. Usually, such a procedure is manifested through the drafting of an agreement, and sometimes it is also the basis of regulatory provisions [2, p.125].

The forced execution procedure is characteristic of situations where the misdemeanant

does not directly compensate procedural expenses, and in this regard, the procedure for obligating compensation through the prism of execution is applied.

In conclusion, we mention that the issue of misdemeanor procedural expenses represents an ongoing subject, but largely warrants a more advanced theoretical-practical development, especially considering that the frequency of misdemeanor cases dictates more significant procedural expenses overall, sometimes even exceeding those related to criminal procedure. From this perspective, it is evident that the domestic legislator is expected to provide a more careful and detailed approach to this subject.

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ANALYSIS OF THE CONTRAVENTION PHENOMENON FOR THE YEAR 2023 – TRENDS AND CHARACTERISTICS OF MANIFESTATION

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Summary

Every year the contravention phenomenon is increasing, respectively, more and more contraventions are detected and examined by the investigating agents, employees of the public authorities with competences in this field.

The given fact refers, in particular, to the Police, but the weight of contraventions examined by the investigating agents within it is more than 90% of all contraventions documented per country.

The police, having limited resources, must face those challenges to which the legal order and the state of legality are exposed, and the correct planning of the forces (resources) held is directly dependent on the perception and anticipation of the negative phenomena that persist in society, either contraventions or crimes.

The analysis of the contravention phenomenon, as well as the criminal one, is important to allow us understand the figures that describe the contravention/criminal picture, but also as a result to effectively prevent and combat these phenomena.

In the given order of ideas, trying to prevent a possible increase in the contravention phenomenon, it is recommended to ensure the rational use of police forces and the implementation of measures dedicated to the prevention and countering of contraventions that have registered an increase over the past years, as well as those that have a greater impact on values protected by law.

Keywords: contravention, contravention phenomenon, ascertaining agent, prevention and combat, contravention sanctions, fine.

Introduction. The negative phenomena, both crimes and misdemeanors, are on a permanent increase during the recent years. The concern of the state to establish, on the one hand, dedicated regulations in order to sanction/punish them, but also to prevent their commission was and is still being a permanent constant.

Society has the right to defend itself and take measures, through specialized state bodies, against any person who violates the rules of social coexistence protected by legal norms.

Any form of legal liability, including the one of contravention nature, derives objectively from the commission of an illegal deed, which gives rise to the state's right to apply the sanction provided for by the violated legal norm and the perpetrator's obligation to bear the consequences of the committed deed [1, p. 23].

Both the criminal and contravention fields present significant risks to the life and health of the population, private property, order and public security, as well as other values protected by

law, and often a contravention is the basis of a crime.

Since the contravention is considered a "lesser evil" than the crime, the realization of consistent and dedicated actions at the stage of its detection and examination, as well as the efficient implementation of the contravention process with the purposes expressed by the constraints mentioned above, can have a major impact in view of reducing the criminal phenomenon and preventing the future criminalization of people who have become aware of deviant and illegal behavior by going through the stages of the contravention process and being brought to liability of contravention nature.

Under these circumstances, the lack of urgent and direct interventions in order to prevent and reduce the contravention phenomenon would generate risks that can increase the level of public insecurity in the community.

The author Guţuleac Victor, making a comparative analysis between the criminal phenomenon that he characterizes as being multilaterally and deeply studied and the contravention phenomenon, rightly believes that with the dismantling of the misdemeanor from the crime and its exclusion from the Criminal Code, it has been forgotten. At the same time, without contravention's studying, as a social phenomenon, the task of its combating cannot be carried out [2, p. 85].

In order to complete the given idea, we are of the opinion that, not only combating it, but also preventing it, or, at last, an increasing emphasis is placed on prevention activities that are more effective than repressive ones.

From the analysis of the statistical data, we find that every year the contravention phenomenon is increasing, respectively, more and more contraventions are detected and examined by the investigating agents, employees of the public authorities with competences in this field.

The given fact refers, in particular, to the Police, or, the weight of contraventions examined by the investigative agents within it is over 90% of all contraventions documented per country.

At the same time, the Police has established mechanisms to effectively prevent and combat the contravention phenomenon, and in addition to the practical aspects aimed at the day-to-day implementation of the legal provisions for the detection and examination of contraventions, as well as the dedicated prevention activities, it is also necessary to understand the ideas theories regarding this phenomenon, an undervalued aspect, we believe, at the national level.

The same author mentioned above believes that "at the current stage of law development, the study of contravention as a social phenomenon, the causes of contravention and the conditions that favor it, the personality of the violator, the forms and methods of prevention of contraventions could constitute the object of study of criminology or contravention law" [3, p. 54], being largely right, given the fact that both sciences analyze these phenomena, but only the criminology is focused, in particular, on the criminal phenomenon, not the contravention one.

In the same context, it defines "contravention" as a negative social legal phenomenon with a variable mass character, from a historical point of view, which is constituted by the totality of contraventions committed on a certain territory in a determined period of time characterized by quantitative indicators (level, dynamics) and qualitative (structure, character) [2, p. 85].

Discussions and results obtained. Through the internal planning and organization documents of the Police, certain priorities are determined in order to combat the contravention phenomenon.

Thus, the Development Strategy in the Field of Internal Affairs for the Years 2022-2030 determines that the field of crime preventing and combating generates the most diverse risks in the public safety environment. In essence, crime directly affects citizens and communities in the most diverse and severe ways. The lack of innovative interventions and solutions generates risks for life, physical integrity, individual freedom, patrimony, tranquility and confidence in one's own safety, the economic and social life of citizens, and all of these are at risk as long as the phenomenon of crime persists and multiplies [4].

Although it refers to the criminal phenomenon, we cannot disregard the contravention one as well, or, most of the time, they are examined together, it is not possible to have an overview of the state of legality in the case when they are divided.

Thus, most of the time, misdemeanors are evaluated and analyzed together with crimes, for example, when reference is made to patrimonial crimes, in the context of the performed analysis, misdemeanors that threaten the real rights of the person are also included, in particular, the intentional destruction or damage of foreign property (art. 104) or the theft of small amounts from the owner's property (art. 105).

When domestic violence is analyzed, the statistical data and analytical notes refer to the criminal deed, as well as the contravention. Thus, during the past year, 880 cases were found that met the constituent elements of the crime component (art. 201^1 of the Criminal Code) and 1719 cases met the constituent elements of the misdemeanor component (art. 78^1 of the Contravention Code). According to the criminal and contravention aspect of the phenomenon of family violence, 2286 women, 272 men, 127 children and 52 women with children became victims of violent actions committed by aggressors within the family [5, p. 11].

The given thing is valid for a multitude of other contraventions, such as those related to the illegal circulation of narcotic substances, those in the field of transport, those related to public order and security.

Regarding the causes of contravention, these are social phenomena and processes that generate and maintain the existence of contravention or cause their increase or decrease. They can be grouped into:

– general contravention causes;
– causes of some types of contraventions;
– causes of specific contraventions.

Their analysis and study allow the competent authorities to combat, but especially to prevent their commission.

Thus, the general causes of contravention refer to the entire contravention phenomenon, being either at the national level, and sometimes at the regional level, exceeding the competences of the authorities responsible for their preventing and combating, and a concerted effort being needed to face them. To these we can attribute, for example, those related to the economic and social situation, such as: low living standard, low incomes, lack of stable jobs, excessive alcohol consumption, etc.

Apart from the causes of contravention, there is also a series of conditions (surroundings, circumstances) that favor the commission of contravention deeds. These include both natural and social or technical factors. The conditions themselves do not generate contraventions, but contribute to their commission. Appreciating some phenomena as causes, and others as conditions, has a relative character, because in different situations one and the same phenomenon can appear both as a cause and as a condition [2, p. 91-92].

In turn, the level of contravention, if we refer to the activity of the Police, is made up of all the detected contraventions, the contravention cases initiated, as well as the people who committed them in a certain territory, at the local level, it can be a specific locality or several localities served by a police unit, at district or municipality level (for which a territorial police inspectorate is responsible), as well as at the level of the entire country, which covers the activity of the entire Police, in a specific time interval (month, semester, year).

According to the data presented by the National Bureau of Statistics regarding the level of contraventions in 2023, 730.7 thousand contraventions were found, or by 45.5 thousand (+6.6%) more compared to 2022.

From the total number of decisions taken on contravention cases, in most cases decisions were adopted to apply the contravention sanction (97,7% or in 674,4 thousand of cases). In 2.8 thousand cases (0.4%) decisions were made to refer to criminal investigation bodies, given the

fact that the actions of the perpetrators contained the index of the crime, and in 13.1 thousand cases the contravention process was terminated for other reasons (1.9%). On average, 268 decisions to apply the contravention sanction were sent to 1000 inhabitants.

By category of contraventions, 71.6% of the total decisions to apply the contravention sanction refer to violations in the field of road traffic, which are increasing by 1.9% compared to 2022. Decisions to apply sanctions for contraventions that threaten public order and public security constituted 10.1%. In the top of the penalty application decisions followed those adopted for contraventions affecting the activity of an entrepreneur, taxation, customs activity and securities 5.4%, increasing by 8.6% compared to 2022, and contraventions that attack the health of the population, the health of the person, the sanitary-epidemiological state and those affecting the political, labor and other constitutional rights of the natural person by 2.8% each, decreasing by 20.3% and 11.1%, respectively, compared to the year 2022 [6].

According to the statistical data presented by the General Police Inspectorate, during the 12 months of 2023, the contravention phenomenon registered a 7% increase compared to the analogous period of the previous year, being detected 721,783 contraventions, compared to 672,906 contraventions for the year 2022 [5, p. 13].

The most committed contraventions sanctioned by the Contravention Code are presented as follows:

– 182812 (art. 236) – exceeding the traffic speed set on the respective road sector;

– 86007 (art. 240, paragraph (1) – non-compliance by the vehicle driver with the priority road signs, the prohibition and mandatory direction signs, the marking on the carriageway side of the road regarding the granting of the movement right priority and the one intended for road vehicles;

– 42457 (art. 238, paragraph (1) – stopping in prohibited places;

– 41167 (art. 235, paragraph (1) – violation of the rules for the use of the safety belt, the fluorescent-reflective warning vest, the child restraint system and the motorcyclist's protective helmet;

– 36427 (art. 354, paragraph (1) – slight hooliganism;

– 35497 (art. 238, paragraph (2) – parking or standing in prohibited places;

– 28633 (art. 245, paragraph (1) – pedestrians ignoring traffic direction signals, crossing the carriageway or moving on it in the unauthorized places, non-compliance with priority road signs, of the prohibition and mandatory sign indicators, of the road rules for motorcyclists, moped drivers, cyclists, coachmen and other road's users;

– 19820 (art. 229, paragraph (2) – driving a vehicle that has not been registered in the established manner or that has not undergone technical inspection;

– 18580 (art. 69) – insults;

– 16061 (art. 229, paragraph (3) – operating a vehicle without holding the compulsory motor liability insurance policy on paper or in electronic format or in the absence of data accessed from the unique information system related to the compulsory motor liability insurance.

As it was indicated above, the most committed contraventions are those in the ***field of road traffic***, with 566,553 contraventions being found with the application of 23,329 sanctions in the form of a warning, 531,471 fines in the amount of 358,738,735 lei, of which 475,691 fines in the amount of 159,055,621 lei were paid, and 55,780 fines in the amount of 56,917,745 lei are unpaid. At the same time, 1,364,042 penalty points were applied as a complimentary sanction.

Out of the total number of contraventions in the field of road traffic, 8,767 contravention cases were sent to court. Following the examination, 511 drivers were deprived of the special driving licenses, 2 people were arrested, 2,997 fines were imposed in the amount of 9,098,850 lei and 1,014 cases were closed.

Among other contraventions with an impact on the legal status we can mention:

– 9,786 reports were drawn up on cases of order disturbance (art. 357);

– 3,789 reports on cases of injury to bodily integrity (art. 78)*;*

– 3315 contravention cases on the fact of illegal procurement or keeping of drugs, precursors, ethnobotanicals and their analogues in small quantities or the consumption of drugs without a doctor's prescription (art. 85).

– At the same time, the Police found several contraventions, the examination of which belongs to the competence of the court, of which the most important are the following:

– 1918 based on art. 63 (non-fulfillment of the maintenance, education and training obligations of the child);

– 38 according to art. 67 (breach of assembly legislation);

– 1722 domestic violence offences (art. 78^1);

– 790 contraventions on non-execution of the emergency restriction order (art. 318^1);

– 544 misdemeanors on malicious non-subordination to the provision or legitimate request of the employee of law enforcement bodies (art. 336);

– 816 contraventions on the fact of insulting the employee of law enforcement bodies, resistance (art. 353), data that refer only to Police employees;

– 719 contraventions based on art. 342 regarding the intentionally false call of specialized services.

No less important is the realization of the profile of the offender according to certain criteria, such as: age, occupation, studies, recidivism, etc. For example, regarding the subject of committing the offense - natural person, legal person, person with a responsible position, the need to generate such information is imposed.

Likewise, a determining criterion would be the categorization of people who commit contraventions depending on their citizenship, making it possible to determine the proportion of contraventions committed by foreign citizens.

Unfortunately, the capabilities of the information system for registration and record of contraventions, at the moment, do not generate such data, and it is necessary to modify and include some faithful parameters in this regard.

In the case of contraventions committed by ***minors***, the contravention picture is shown by the following statistical data - 787 contravention cases were drawn up, compared to 600 in 2022, of which:

– 42 on the fact of insult (art. 69);

– 44 on the fact of injury to bodily integrity (art. 78);

– 71 on the fact of destruction or intentional damage of another person's property (art.104);

– 120 in the case of theft in small proportions from the owner's property (art.105);

– 246 for contraventions in the field of road traffic (art. 228-245);

– 129 on the fact of slight hooliganism (art. 354);

– 50 for the consumption of alcoholic beverages and drunk appearance in public places (art. 355);

– 33 on the fact of peace disturbance (art. 357).

Another aspect, no less important, is the connection and mutual influence between the contravention phenomenon and the contravention sanctions system.

Thus, the author Guţuleac Victor determines that "the contravention phenomenon and its legal regime in the matter of contraventions represent an important area of legal responsibility" [7, p. 10].

The contravention itself and the contravention phenomenon have as their genesis various factors, social, psychological, biological, economic, cultural, etc. The social reaction against illegal acts, to be effective, must take place on several levels, namely political, educational, economic and legal. Among the various types of social reactions, an important place is occupied by the application of legal sanctions to persons who do not conform their behavior to legal norms [8, p. 13].

Respectively, the intervention of the state takes place through activities of prevention, as

well as sanctioning of contraventions, in order to diminish them and reduce their impact on the values protected by the legal norm.

In turn, the author Furdui Sergiu, analyzing the characteristic features of the contravention sanction, indicates that it is "a coercive measure from the state; a means of correction and re-education; is intended to prevent the commission of other contraventions, strictly speaking by applying, executing the contravention sanction, the aim is to prevent the commission of other illegal acts" [9, p. 110].

As a result of the examination of contraventions, during 2023 the following contravention sanctions were mainly applied: 23.0 thousand warnings (about 2 times more compared to the year 2022), 648.5 thousand fines (0.2% less compared to 2022) and 2.6 thousand sanctions applied regarding unpaid work for the benefit of the community [6].

The increasing application of the sanction in the form of a warning does not have a negative aspect, but on the contrary, by applying this sanction which is a moral one, the investigating agent gives the person who commits an offense the opportunity to review his behavior without applying a more severe sanction.

If the system of sanctions is not well thought out and applied, it will not have a great contribution in preventing and combating the contravention phenomenon, and today the system of contravention sanctions requires certain changes and revisions, or it does not fully achieve its intended purpose established by the legal provisions to effectively combat and prevent the commission of contraventions.

In this sense, the analysis should be a complex one, starting from the causes and conditions that determine/favor their commission and ending with the result determined by the application of the sanction. This is why a separate component of the evaluations and analyzes carried out specifically refers to the enforcement mechanism of contravention sanctions and their impact.

Thus, in practice there are certain shortcomings related to the contravention sanctions that make it difficult for both the investigative agents and the courts, simultaneously, associated with multiple interpretations and ambiguities related to the individualization conditions and the applicable mechanism. In the same way, not always the people who are held responsible are applied a proportional and effective sanction with the committed illegality.

As we have determined, the most applied sanction by the investigative agents of the Police was the fine, for a total of 666,505 cases, in the amount of 466,987,615 lei [5, p. 13].

From the total number of fines applied, fines were paid in 550,447 cases, in the total amount of 190,185,641 lei, and 116,058 fines were unpaid in the amount of 108,394,680 lei. The rate of payment of the contravention fine for the period of 2023 is 82.58%.

At the same time, referring these data to art. 34, paragraph (3) of the Contravention Code which provides that "the perpetrator is entitled to pay half of the established fine if he pays it in no more than 3 working days from the date of notification of the decision to apply the contravention sanction" [10] it is considered that the sanction is executed ***in full***, and therefore the calculation of the payment yield cannot be made according to the size of the fine, but only according to the number of fines paid.

Thus, according to the number of contravention cases in which the fine sanction was paid, the percentage is a high one, not according to the size of the total fines applied and executed.

For example, when we analyze the data regarding the application and collection of the given sanction, we determine that in 2023, the amount of fines applied was 556.6 million lei (6.2% more than in 2022), but there were collected 226.4 million lei (40.7%).

The collection level of fines applied differs depending on the category of contraventions. Thus, the highest rate of collection of applied fines was recorded for contraventions in the agricultural and sanitary-veterinary fields - 47.3%, those regarding the transport regime - 45.1%, and for contraventions regarding the border regime of state and residence regime on the territory of

the Republic of Moldova as well as those in the field of road traffic 44.2%. The lowest collection rate was recorded in the case of contraventions affecting real rights – 17.0% and in the field of electronic communications and postal communications – 17.1% [6].

From the analysis of the respective data, we deduce that, for the most part, small fines are paid, and large fines, as well as the procedure for applying them, are most often challenged in court or, in general, are not paid due to negligence.

In the given order of ideas, the mechanism for both the application of the sanction in the form of a fine in the sense of holding the persons who avoid honoring this obligation, as well as their enforcement, including forced one, should be reconsidered.

Characteristic to the contravention phenomenon is the fact that it is dynamic, respectively, the changes in society directly influence this phenomenon. For example, one of the most violated articles of the Contravention Code (during the years 2020-2022) was article 76^1 (non-compliance with the measures of prophylaxis, prevention and/or combating of epidemic diseases, if this endangered public health, namely, for the year 2022, the restrictions related to the pandemic generated by COVID-19 still being applicable, 4698 contraventions being documented, as in 2023, once these restrictions have been completely removed, their number being only 125 contraventions, with a 97% decrease).

The respective article was introduced into the Criminal Code [11] during the first days of the onset of the coronavirus pandemic, when it was declared a "state of emergency" starting on March 17, 2020, and after the first 60 days it was replaced, in May 2020 with the "state of emergency in public health", during which the authorized entities (initially the Extraordinary Situations Commission, later the Extraordinary National Public Health Commission) established a multitude of restrictive measures that were intended to diminish and reduce the impact of the pandemic, and non-compliance with them being sanctioned according to the article mentioned above.

At the same time, during the last years, several contraventions were excluded from the Contravention Code, which were either no longer found in the national legislation, or were transferred to the Criminal Code, the punishment for committing them being toughened, namely:

• **article 274 (violation of trading rules in the market), paragraph** (5) – organizing hand-to-hand trade in places not authorized by the local public administration authorities;

• **article 301 (tax evasion of individuals);**

• **article 343 (transmitting or attempting to transmit prohibited objects, substances, products to detainees);**

• **article 351 (non-compliance with the Law regarding the functioning of the languages spoken on the territory of the Republic of Moldova);**

• **article 363 (shooting a firearm in public places, in places not reserved for shooting or in violation of the established manner).**

The analysis of the contravention phenomenon is carried out, including through the lens of the number and conditions of classification of contravention cases, an important role, in this sense, returning to the quality of the procedural documents drawn up by the investigating agent, as well as the quality of the act of justice carried out by the courts, or, their role is to examine either the contested decisions of the investigating agents according to the assigned territorial competence, or to examine the contraventions found by them as those committed by minors or those for which certain sanctions are applied (deprivation of special rights, unpaid work for the benefit of the community, misdemeanor arrest), as well as those provided by certain articles of the Contravention Code reflected above (63, 67, 78^1, 318^1, 336, 353 and others) which represent the material competence of the courts.

The grounds for termination of the contravention process, including at the examination stage in the court of law, are established by art. 441 paragraph (1) of the Contravention Code, which provides that the contravention process cannot be started, and if it has been started, it can-

not be carried out and will be terminated in cases where:

– the fact of contravention does not exist;

– any of the grounds provided for in art. 3 paragraph (3), art. 4 paragraph (3), art. 20-31;

– the person presumed to be the perpetrator has died, except in the case of his rehabilitation;

– for the same deed and regarding the same person there is a final decision/judgment;

– a criminal investigation is initiated for the same deed;

– the perpetrator is not identified and/or the statute of limitations for criminal prosecution has expired [10].

Apart from these grounds, another reason for the termination/dismissal of the contravention process is the lack of evidence that would prove the guilt of the offender. Or, according to art. 425 of the Contravention Code, evidence is factual elements, acquired in the established manner, which serve to establish the existence or non-existence of the contravention, to identify the perpetrator, to establish guilt and to know other important circumstances for the fair resolution of the case.

And according to the provisions of art. 440 paragraph (1) of the Contravention Code, finding the contravention means the activity carried out by the investigating agent, of collecting and administering the evidence regarding the existence of the contravention, concluding the report on the contravention, the decision on the examination of the contravention based on the ascertaining officer's finding or the protocol on the contravention, applying the contravention sanction or sending the file, as the case may be, to the official authorized to examine the contravention cause, within the authority of which the ascertaining agent is a part, in the court or in another body for resolution.

Another important reason for the termination of the contravention case is their documentation in violation of the provisions of art. 443 of the Contravention Code, which regulates the content of the report on the contravention, and the recording of certain essential mentions in the report on the contravention: (name, surname and function of the ascertaining agent; name, surname, date (day, month, year) of drawing up the minutes; series and number of the identity document and the personal identification number (IDNP), and in the case of the legal person – the lack of the name and its headquarters, the circumstances of the commission and legal classification of the contravention committed and the date of its commission, the signature of the ascertaining agent or the assistant witness, in the case of the offender's refusal to sign if the minutes were drawn up in the presence of a witness), provoke the absolute nullity of the minutes, according to art. 445 of the Contravention Code.

Also, according to art. 443 paragraph (7) corrections, additions, other changes are not allowed in the minutes. In the case of the need for such actions, a new record is drawn up, in which the respective entry is made [10].

Thus, as a result of an analysis of the given chapter, for the period of 2023 on the entire police system, a total number of 3130 judgments and decisions of the courts were found which ordered the classification, cancellation or termination of contravention processes initiated by the Police, namely 2200 on the grounds that there is no contravention: 26 when the person presumed to be the perpetrator has died; 29 in the case when a criminal investigation is initiated for the same deed; 66 because the perpetrator was not identified and/or the statute of limitations for criminal liability has expired, 62 on the admission in the minutes of rectifications, additions and other changes; 322 on the nullity of the minutes regarding the contravention; 65 for lack of evidence.

Conclusions. Determining the nature of contravention, awareness of the real social danger of the contravention phenomenon would allow us to elucidate some alarming trends that dominate the evolution of contravention, to highlight the causes and conditions that favor the increase or decrease in the level of contravention [2, p. 91].

In this context, the lack of urgent and direct interventions in order to prevent and reduce the contravention phenomenon would generate risks that can increase the level of public insecurity in the community.

Since the contravention is considered a "lesser evil" than the crime, the realization of con-

sistent and dedicated actions at the stage of its detection and examination, as well as the efficient implementation of the contravention process with the purposes expressed through the constraints established by the legislation, can have a major impact in view of reducing the criminal phenomenon and preventing the future criminalization of people who have become aware of deviant and illegal behavior by going through the stages of the contravention process and being brought to contravention liability.

Thus, in order to prevent a possible increase in the contravention phenomenon, it is recommended to ensure the rational use of police forces and the implementation of measures to prevent and counteract the contraventions that registered an increase during the examined period. Also, it is recommended to train/self-train investigating agents for the correct examination of contravention cases in order to reduce the number of contravention cases contested and annulled by the courts.

Regarding the analysis of the contravention phenomenon, it should be a complex one, starting from the causes and conditions that determine/favor their commission and ending with the result determined by the application of the sanction.

If the system of sanctions is not well thought out and applied, it will not have a great contribution in preventing and combating the contravention phenomenon, and today the system of contravention sanctions requires certain changes and revisions, or it does not fully achieve its intended purpose and established by the provisions legal to effectively combat and prevent the commission of contraventions.

Regarding the most applied contravention sanction, we infer that, for the most part, small fines are paid, and large fines and the procedure for their application are most often challenged in court or, in general, are not paid by neglect. In this sense, the mechanism of both the application of the sanction in the form of a fine in the sense of holding the persons who avoid honoring this obligation, as well as its enforcement, including its enforcement, must be rethought.

No less important is creating the offender's profile according to certain criteria, such as: age, occupation, studies, recidivism, etc. which is currently not accomplished, as it is necessary to adjust the data collection system as well as their analysis.

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ORGANISED CRIME IN RELATION TO CYBERCRIME

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Summary

As technology has changed people's lives, criminal phenomena are also constantly evolving. Today's digital society is changing the activities of organized crime and organized crime groups. In the digital society, very different organized crime groups with different organizational models coexist: from online cybercrime to traditional organized crime groups and to hybrid criminal groups where humans and machines "collaborate" in new and close ways in networks of human and non-human actors (artificial intelligence). These criminal groups carry out very different organized crime activities, from the most technological to the most traditional, and move from online to offline. They use technology and interact with computers for various purposes, and the distinction between the physical and virtual dimensions of organized crime is increasingly blurred. In this context, this paper proposes to analyze the concept of computer/digital organized crime and makes brief introspections into the theory of the digital organized crime spectrum, to be integrated into a current, revised sociological theory of the organization of organized crime and deviance in the digital society (a new theory of digital criminal organization), ultimately arguing that the study of computer organized crime will increasingly require a digital sociology of organized crime. Criminologists are, therefore, called to work in this direction. We are only carrying out a study that outlines, from a theoretical and practical point of view, what are the needs in the field. Also, in this article we propose to address the relationship between the digital society and organized crime, through the lens of a theoretical framework of criminological interpretation, but also a definition of organized crime that takes into account the changes that the digital society brings to the activities and groups of organized crime and capable of generating more modern research hypotheses.

Keywords: organized crime, digital society, digital organized crime, cybercrime.

Introduction. Organised crime is defined as "those engaged, normally in collaboration with others, in the continuation of serious criminal activities for substantial profit elsewhere". Organised crime involves extortion, collecting protection money from wealthy businessmen, contract killings, kidnappings, film financing, human trafficking, trafficking in human organs, drug trafficking, drug trafficking, smuggling and illicit trade in arms and ammunition.

In this article, we look at the characteristics of organised crime, these being the following:

• *Characteristics of organised crime*. The criminal group operates beyond the lifetime of individual members and is structured to survive changes in leadership. The gang remains continuously involved in criminal activities. These groups ~~do~~/ are not formed temporarily, but groups are in existence for a long period of time. Similarly, exploratory research shows that the children of organised crime offenders appear to be more at risk of following in their parents' footsteps than the children of general offenders.

• *Structure*. The criminal group is structured as a collection of interdependent individuals

arranged hierarchically and dedicated to the performance of a particular function. They are distinguished by ranks based on power and authority. The United Nations Convention against Transnational Organised Crime also states (Article 2) that a structured group means a group which is not randomly formed for the immediate commission of a crime and which does not need to have formally defined roles for its members, as continuity of membership is important. Organised crime operates like a corporation. They appoint a leader who is assisted by other members in the hierarchical structure. Members are appointed on the basis of skills, relationships with existing members, etc. The group remains permanently committed to committing a crime. Organised crime thus has a structure with degrees of authority from the lowest to the highest, involving a system of specifically defined relationships with mutual obligations and privileges. Organised crime has a boss, advisors who work closely with the boss and assign tasks to different crews, captains who lead the different crews, soldiers who do the physical work and carry out tasks from collecting money to killing people, and people with special skills.

• *Centralised authority*. Organised crime operates on the basis of centralised control and authority, which is vested either in the hands of a single individual or in the hands of a few members. Everyone respects the leader of the group. No member of the group defies the leader's orders. For members, the organization is above themselves and their family members.

• *Membership* of the core criminal group is restricted and based on common traits such as ethnicity, criminal background or common interests. Potential members are subject to immense scrutiny and must prove their value and loyalty to the crime group. Rules of membership include secrecy, willingness to commit any act for the group and intent to protect the group. In return for loyalty, the member receives economic benefits, some prestige and protection from law enforcement agencies.

• *Teamwork*. Organised crime involves the association of a group of criminals that is relatively permanent and can last for decades. Members respect each other most, behave honestly towards each other and never harm each other in any way. Members are obligated to each other and offer each other services. For members, the organization is above themselves and their family members.

• *Criminality*. The criminal group relies on continuing criminal activity to generate income. Thus, continuous criminal conspiracy is inherent to organised crime. Some activities, such as the provision of illegal goods and services, directly produce income, while others, including murder, intimidation and bribery, contribute to the group's ability to earn money and increase its power. The criminal group can have both legitimate and illegitimate business activities.

• *Planning*. Organised crime involves pre-arrangements for successfully committing crimes, minimizing risks and ensuring safety and protection. Group members work as professionals whose duties and responsibilities are predefined.

• *The secret*. A high degree of secrecy is maintained in the organised crime group. Only people in senior positions know what crime is to be committed, sometimes even criminals working at the grassroots level don't know who the boss is. The head of the organisation gives the order to the person and the second in command who in turn may instruct others to commit the crime. There is a possibility that members are not aware of the other members of the group.

• *Specialization*. Some groups specialize in a single crime, while others may be involved in several crimes simultaneously. Those groups that are involved in more than one crime are more powerful and influential.

Division of labour. Organised crime involves delegation of tasks and responsibilities and specialization of functions. There is a division of labour between members according to their skills. Members work as professionals whose duties and responsibilities are predefined. Organised crime groups and their protectors rely on skilled individuals or the support of specialists to help achieve the group's objective. The specialist assists criminal groups on an ad hoc rather

than permanent basis. They are still considered part of organised crime. Specialists include pilots, chemists, arsonists, hijackers, shooters, etc.

• *Violence*. Organised crime depends on the use of force and violence to commit crimes and to maintain internal discipline and limit external competition. Violence and the threat of violence are an integral part of a criminal group. Violence or the threat of violence is used against members of the group to restrain them and against outsiders to protect the economic interests of the group. Members are expected to commit, condone or authorise violence.

• *Purpose of power/profit*. The purpose of organised crime groups is to make money; members also gain a sense of pride, power and protection. Political power is gained by corrupting public officials, including legislators and the political executive. Sometimes such a group can also penetrate the legitimate economy through construction, business financing or, in the case of the Mafia, assuming quasi-governmental roles.

• *Monopoly*. Organised crime has expansive and monopolistic tendencies. Initially, organised crime gangs operate in a limited area and are engaged in a limited type of crime with a limited number of individuals, but gradually expand into a wider range of activities spread over large geographical areas, involving a large number of carefully selected offenders. They secure a monopoly in their criminal enterprises by using violence or threats of violence to eliminate competition.

• *Protectors*. Organised crime organises permanent protection against intervention by law enforcement and other government agencies. Protective measures include contacts with police, lawyers, doctors, politicians, judges and influential people in society. There are corrupt public officials, politicians, lawyers and businessmen who, individually or collectively, protect the criminal group by abusing their status and or privileges and breaking the law. Corruption is the central tool of the protectors of criminals. A criminal group relies on a network of corrupt officials to protect the group from the criminal justice system. Corruption involves offering cash or gifts, offering help in elections, threatening competitors, providing helicopters and arranging their travel abroad.

• *Conspiracy*. Organised crime has a conspiratorial character. Members of a syndicate engage in criminal activities after there is a consensus of its members. It is committed by planning and coordinating individual efforts with prior meeting of minds. Conspiracy is at work in all criminal activities. As a matter of principle, in advance planning, all members should be involved in the conspiracy. But in reality, only those in higher positions know what crime is to be committed, sometimes even criminals working at the grassroots level do not know who is in charge. The head of the organisation issues the order to the person and the second in command who in turn may instruct others to commit the crime.

• *Reserved fund*. The organised crime group maintains a reserve fund from its profits, which serves as capital for criminal enterprises, to solicit help from the police, lawyers and even politicians, and to ensure the safety of arrested members and their families.

Cybercrime. Although the phrase does not exist in the dictionary (ironically, it is not found in the dictionary either, nor does it even appear in the Microsoft online dictionary), yet a web search for the word using the popular Google search engine reveals over 140,000 results.

The European Union has set up a body called the Cybercrime Forum and a number of European countries have signed the Council of Europe Convention on Cybercrime, which seeks to standardise European laws on internet crime. Each organisation and the authors of each piece of legislation have their own ideas about what defines cyber or cybercrime. These definitions can vary little or widely. To effectively discuss cybercrime in this paper, however, we need a working definition. Towards this end, we start with a broad, general definition and then define the specifics of cybercrime.

Cybercrime can generally be defined as a sub-category of organised crime offences, being offences that relate to criminal acts committed using the internet or another computer connected to a network. Computers and networks can be used in cybercrime in several different ways:

• The computer or network can be the instrument of the crime (used to commit);
• The computer or network may be the instrument used in the commission of the computer crime;
• The computer or network may be the target of the crime ("victim");
• The computer or network may be used for secondary purposes related to the crime (e.g. to keep track of illegal drug sales).

The United Nations definition of cybercrime provides a standard definition of this type of organised crime. At the 10th United Nations Congress on the Prevention of Crime and the Treatment of Offenders, in a workshop on computer network crime issues, cybercrime was divided into two categories and defined as follows:

a. Cybercrime in the narrower sense (computer crime): any illegal conduct directed through electronic operations that targets the security of computer systems and the data they process.

b. Computer crime in the broad sense (cybercrime): any illegal conduct committed through or in connection with a computer system (computer or computer network), including offences such as illegal possession [and] providing or distributing information through a computer system or network.

Of course, these definitions are complicated by the fact that an act may be illegal in one nation, but not in another. The document goes on to give more concrete examples, including: unauthorized access, damaging data or software, computer sabotage, unauthorized interception of communications, computer espionage.

The first step in specifically defining individual cybercrimes is to classify all acts that can be considered as cybercrime into organised categories. There are three types of organised criminal activity linked to the new technologies discussed above: cyber-dependent organised crime, cyber-supported organised crime and cyber-assisted organised crime. Organised criminal activity in this context means serious criminal activities carried out with forms of organisation, professionalism and criminal specialisation by organised crime groups working together online or offline/online over a prolonged, extended period of time and using communication and information technologies in a particular way and at different stages.

Cyber-dependent organised crime. Cyber-technology-dependent organised crime is high-tech organised crime that can only be committed using computers, computer networks or other forms of information and communication technology. These are new crimes that have emerged with the digital society and are possible because of it: they are the true and 'pure' cybercrimes that come to life with the internet and can only be committed in cyberspace, as Wall (2005) first noted in his paper. Without technologies and the internet, they would not exist. This definition has been refined by McGuire and Dowling (2013), who proposed a subdivision based on how these crimes are committed: unauthorised intrusion into computer networks and disrupting or damaging the functionality of computers and networks. The family of illegal intrusions includes hacking, unauthorised access to computer networks, computers, mobile phones and tablets, exploitation of security vulnerabilities, mainly to collect personal data or useful information, but also to deface websites and launch DoS or DDoS attacks.

The second category, disruption and damage, includes malware (malicious software that spreads on computers and interferes with their operation and can take various forms, e.g. viruses, worms, Trojans, spyware, ransomware); spam (unsolicited e-mail messages, usually sent to numerous recipients and often linked to pharmaceutical or pornographic products to collect personal information of victims, including through malware).

Organised crime using cyber technology. The digital society has given a major boost to a number of traditional crimes whose scale has been amplified by the use of computers, computer networks or other forms of information and communication technology: these can be called cyber-crimes (McGuire and Dowling 2013). Wall (2005, 2015) calls them 'hybrid cybercrimes',

traditional crimes to which the internet has opened up entirely new possibilities.

The term "*cyber-supported organised cybercrime*" includes, for example, computer fraud, computer-related identity crime, online extortion and ransomware, online child sexual abuse and exploitation, and cyber-laundering, which are increasingly committed by various types of organised crime groups (UNODC 2021: 47-95; Europol 2021).

Many classic organised criminal activities have moved entirely onto the internet and have been facilitated by the digital revolution. In a recent and interesting study, Wang et al. (2021) examined the organized internet-based scamming and loan-sharking activities of traditional organized groups in China at the expense of university students. The world of fraud is among the areas that have benefited most from the advent of the internet (Button and Cross 2017). The digital society has "industrialised" the scale of fraud (see, for example, Van Nguyen 2022). Just as modern technology has expanded the ability of businesses to reach larger and more lucrative markets, so too have fraudsters: frauds that were already widely committed using traditional means of communication, such as mail and telephone, suddenly became easier, more efficient and more economical when they used the internet and moved into global markets. One example of organised online fraud that is becoming increasingly common internationally and in which African organised crime is particularly active is BEC, Business Email Compromise. In BEC schemes, criminals use hacking or social engineering to obtain relevant corporate information via the internet, which they then use to defraud executives, financial officers and business owners into making illicit payments on behalf of the companies they manage [Interpol 2020, p. 17-19].

Artificial intelligence is also already widely used in organised online financial crime. In financial crime (see e.g. Yeoh 2019), artificial intelligence can be exploited to manipulate the market, to fraudulently set share prices and to facilitate collusion between multiple market players. Artificial intelligence systems can operate autonomously in the service of their creators to artificially influence stock prices by automatically generating market disruption signals that can genuinely deceive legitimate actors (Wellman and Rajan 2017: 14). "Pump and Dumb" schemes, in which a stock's market prices are illegally pumped and then deflated to profit from price fluctuations, can be created with the help of social bots that massively disseminate false information to large numbers of potential buyers.

Cyber-assisted organised crime. In the digital society, traditional offline crime is facilitated by the use of new technologies. There are complex offline criminal activities which, from a criminal justice perspective, are often interdependent 'chains' of crimes that are facilitated only by the use of computers, computer networks or other forms of information and communication technology. The digital tool is not central to these forms of organised crime; its role is rather incidental, albeit important. In this context, Wall (2005, 2015) speaks of "traditional crime" where the internet is used as a means of communication or more generally to support the organisation and its activities.

Among the researchers most invested in this area is Lavorgna (2013, 2014, 2015), who has explored how the internet is being used by criminals, particularly organised criminals, to commit transit crime and how it has changed criminal behaviours and processes, as well as reconfiguring relationships between suppliers, intermediaries and buyers. Lavorgna (2015) also identified five main types of opportunities that the internet offers to criminal groups involved in traditional organised criminal activity.

In these cases, the network: 1) facilitates communication between criminals and between criminals and (potential) customers through the use of email, Skype and other forms of instant messaging (communication opportunities); 2) improves the efficiency of criminal markets by allowing trade to adjust easily and quickly to changes in demand (managerial opportunities); 3) facilitates the internal organisation of trade groups (organisational opportunities); 4) enables the expansion of relationships between criminals by creating new business relationships (relational

opportunities); 5) also serves as a resource for understanding the needs of potential customers and for more effective promotion of contraband (promotional opportunities).

In considering these opportunities, as well as others also noted in Lavorgna's work for certain organized criminal activities, a distinction must be made between those involving the organization of criminal activity (and we refer to the sociological concept of "organizing deviance" which we discuss in this section) and those involving the organization of criminal groups (which we discuss in the next section, i.e., the relationship between "organizing deviance" and digital). The digital society can unleash its effects both on the activities of organised crime, facilitating them, and on the way in which the structures of organised crime groups, relationships within organised crime groups and between organised crime groups are shaped.

To illustrate, the communication opportunities mentioned above (together with promotional opportunities) may lead organised criminal groups involved in the whole chain of a particular illicit trade to increasingly offer illicit goods and services online. But the same communication opportunities (combined with organisational and relational opportunities) may also lead established criminal groups to adopt internal recruitment models (of criminal group members) based on online contacts and relationships, and accelerate the spread of organised criminal groups with simpler, faster and more fluid structures. This is because the possibility of cooperation is simplified by internet communication and it is increasingly easy to maintain close relationships with other criminal organisations and service providers, even if they are physically distant, to whom some of the work can be outsourced, creating 'criminal network networks'.

Studying the impact of the digital society on organised criminal activity as it moves from the offline to the online world and vice versa is becoming increasingly important, as is studying the impact on the organisation of criminal communities.

Criminal socialization and organized crime groups in the digital society. According to a quantitative analysis by Weulen et al. (2019), the social bonds that develop between high-tech and cybercriminals differ from those that form between traditional offenders and are less likely to lead to the sharing of criminal information and common forms of cybercrime. Qualitative analyses have shown that perpetrators of cybercrime share knowledge, information on criminal opportunities and neutralisation techniques with online and offline acquaintances and friends (e.g. Holt 2007, 2009; Holt et al. 2012; Hutchings 2014; Hutchings and Clayton 2016).

However, as Holt (2007, 2009) also suggests, cybercriminals generally work alone, but also learn from forums and other online sources. To use Best and Luckenbill's (1982) categories of deviant organisation, cyber-addicted offenders would tend to be of the 'peer' type, often socialising with deviants in their own category, but generally operating alone: spending time together online and offline, but not committing crimes together.

Leukfeldt et al. (2017) confirm that these online social relationships of cybercriminals rarely lead to associations with cybercriminals. Specifically, according to the authors, cybercriminal associations occur in four ways (the first two accounting for about three-quarters of the total): 1) offline social contacts only; 2) offline social contacts as a basis and online forum for recruiting specialists; 3) online forum as a basis and offline social contacts for recruiting local criminals; 4) online forums only.

There is no doubt that we do not find all these elements of "traditional" mafia-type organised crime in cybercrime groups, or only very rarely. These elements almost never appear in online criminal organisations, just as (it must be stressed) they are not found in some offline criminal organisations, albeit stable and reputable ones. Wall (2015) points out that the organisation of (organised) cybercrime follows a different logic from that of traditional organised crime, which is why Wall calls it a 'disorganised' model: cybercrime groups rely on reputational dynamics, are composed of few individuals and often lack a hierarchical control structure. Wall defines them as "ensembles" rather than "organisations". Unlike traditional criminal organisations, members of

an online criminal organisation may never have met.

McGuire (2012) distinguishes three main types of criminal groups operating in cyberspace, each of which is divided into two subgroups based on the strength of association between members. These organisational patterns often overlap in very fluid and confusing ways:

1) Type (I) groups, which are largely "virtual" and are formed through trusted relationships based on individuals' reputations in illegal online activities. These essentially operate online and can be further subdivided into: (1a) 'swarms', described by McGuire as 'disorganised organisations [with] common purpose without leadership' (ibid.: 3). Swarms tend to have minimal chains of command, and their mode of operation is reminiscent of earlier "hacktivist" groups. Indeed, they are most active in ideologically-driven online activities such as hate crimes and political resistance; (1b) "hubs", which also operate mainly online, but unlike swarms, have a more defined command structure. They consist of a hub of core criminals, who give instructions to agents on the periphery. They engage in various illegal activities;

2) Type (II) groups that combine online and offline crime and are referred to as "hybrids". They are divided into: (IIa) "clustered hybrids", where the organisation revolves around a small group of individuals who focus on specific criminal activities or methods and who move seamlessly from online to offline offences; (IIb) "extended hybrids", which are much less centralised as they are composed of several associates and subgroups without a clear hierarchical structure;

3) Type (III): groups that operate mainly offline but use online technology to facilitate their activities. These are divided into (IIIa) 'hierarchies' or traditional organised crime groups; and (IIIb) 'aggregated groups', which are loosely organised, transient and lack a clearly defined objective (McGuire 2012).

Conclusions. When trying to understand current developments in digital society, we should also consider new forms of organised crime that seem futuristic, but towards which we are increasingly moving. Think of botnets, networks of infected computers controlled by one or more controllers to carry out cyber-attacks and which are increasingly being used for cybercrime.

In this context, Broadhurst et al. (2014: 4) state that "the standard definition of organised crime contained in the UN Palermo Convention, based on the participation of three or more persons acting in concert, does not extend to certain highly sophisticated forms of organisation, such as the mobilisation of networks of robots that may be operated by a single person".

New technologies generate new organised crime groups, change the characteristics of old organised crime groups and are exploited by organised crime groups which, while not changing their structures, are changing their activities.

For this reason, there is a need for more elastic criminological interpretations, concepts that do not separate the 'virtual' from the 'physical' dimension of organised crime and organised cybercrime from organised crime (whether traditional or not) in a way that bears little resemblance to reality, as if they were opposing concepts that have nothing in common, without a minimum common denominator. All the "modern" modalities of organised crime that the digital society has brought should be fully contained within an updated concept of organised crime, and not outside its scope. Thus, it could be argued that it is precisely the criminological definition of organised crime that needs to be revised today, especially in the light of the new global phenomena brought about by digitalisation.

In terms of digital organised crime and digital organised crime spectrum theory, it is now increasingly difficult to separate (many) criminals operating offline from those operating online and (many) crimes committed in the cyber world from those committed in the physical world. The two worlds are increasingly intertwined. In the digital society, people's daily behaviours and physical habits are changing in response to digital ones. Digital has an impact on the social dimension, online and offline.

There is no longer a need for a narrow definition based on partially outdated paradigms, but

for broad reference points, a more modern theoretical approach capable of capturing the radical changes that the digital society is also bringing to organised crime, and more modern research hypotheses: A theoretical approach to digital organised crime that allows us to consider the multiple facets of organised crime in the digital society, without abandoning both the technological category of cyber organised crime and the concepts of traditional organised crime that researchers have arrived at. In other words, a sociology of crime approach should be adopted that attempts to track modern organised crime phenomena in the context of such a pervasive digital society.

The use of the term "digital organised crime" is proposed here not as a synonym for organised cybercrime, but as a concept that aims to capture the many manifestations of organised crime groups and organised crime in the digital society, including online organised crime groups and online organised cybercrime (with its undeniable specificity), which would represent the most technical subset. This concept makes it possible to interpret all forms of organised crime in its subjective and objective dimension, which is embodied in the modern digital society.

"Digital organised crime" refers to groups of individuals (and individuals and machines, actors) working together with various forms of specialisation and professionalism and organising themselves in different ways to commit online, offline/online and offline criminal activities that require the organisation of criminal activity over a long and extended period of time and that are strongly influenced by the digital dimension in terms of the criminal activities they commit and the way these activities are organised, the organisation of the criminal group itself and the relationships with other criminal groups and criminal actors and machines. Within this concept, it is possible to integrate both online organised cybercrime groups and traditional organised crime groups, both human actor groups and networks of human and non-human actors and the socio-material objects they produce in their interaction (actor networks). The theoretical framework in which we propose to insert this definition is that of a current, revised sociological theory of the organization of crime and deviance in digital society, a new theory of digital criminal organization (which will be developed from the contributions of Cressey 1972; McIntosh 1975; Best and Luckenbill 1982; Best and Luckenbill 1982; Rostami 2016; Rostami et al. 2018).

In terms of digital organised crime and the spectrum of digital organised crime, we can learn much from the Covid-19 pandemic, which has affected every aspect of our lives (see, for example, Kemp et al. 2021). In the face of a general and decisive decline in crimes characterised by physical aspects, the pandemic years (2020 and 2021) have seen a sharp increase in crimes related to the online world in all developed countries.

As far as the European Union is concerned, the crimes that have increased the most are not only cybercrime in the strict sense (such as ransomware or DoS or DDoS attacks), but also online theft and digital identity fraud, online fraud of all types, credit card cloning and credit card fraud (Europol 2020).

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THE PARTICULARITIES OF THE ACCEPTANCE AND RECOGNITION OF ELECTRONIC DOCUMENTS AS EVIDENCE IN CRIMINAL AND MISDEMEANOUR PROCESS

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Summary

The introduction of electronic documents in criminal and misdemeanour process is an extremely proximate perspective. As a pilot project, the investigators of the Chisinau municipality have already been successfully applying the electronic document in the process of examining traffic offences for more than a year.

At the same time, we identify a number of regulatory difficulties in this process. Some of them will be discussed in the following study.

Keywords: electronic document, document written on paper, criminal process, misdemeanour process, administration, examination and recognition of electronic document.

Introduction. The advancement of our society to the „information technology" requires reforms in all areas of social life.

Lately, as a result of the advancement of the intervention of information technologies in social life, the subject of the use of electronic documents has been raised more and more frequently.

Indeed, the application of the electronic document process offers a number of benefits, such as saving paper, which has a positive impact on the environment, but also avoids bureaucratic procedures which, for the most part, make it difficult to use any document.

If initially, the electronic document was only an alternative in public life, usually unreliable, then today the legislator gives the electronic document the same legal status as the written (holographic) document.

The reason for this is that the Law on Electronic Identification and Trust Services does not distinguish a subsidiary or alternative status of the electronic document. On the contrary, the Law on Electronic Identification and Trust Services [4, art.2] defines an *electronic document* as content in electronic form, in particular in the form of text or a sound, visual or audiovisual recording, to which an electronic signature or electronic seal has been applied.

To a large extent, the customary nature of these regulations radically changes the perception of the notion of document, and in the criminal and misdemeanour process, this has the effect of changing the whole system of perception of the notion of „misdemeanour case" and „criminal case", as well as the preparation of documents in electronic format in criminal and misdemeanour cases.

Thus, although the legislator has been regulating a new electronic document regime since 2022, most public authorities are still documenting criminal and misdemeanour cases in a primitive manner, without using the options offered by the electronic document.

The application of the electronic document regime offers a number of advantages as well as guarantees.

Discussions and results obtained. Obviously, the idea from which we will start is that the electronic document represents an opportunity that the legislator offers for the contravention process, and its use is possible even today, and moreover, even in the absence of an operational computerized system specifically developed for the operationalization of the processes of drafting documents in the contravention process.

In this regard, we will start from the assumption that although the Ministry of Internal Affairs has set itself the task of developing the operational system of e-filing of contraventions [5, p.177], which is intended to ensure that the investigating officers are equipped with a programmed system for the generation and application of procedural documents in the contravention process, and given that to date this goal has not yet been achieved, we must nevertheless recognize that the possibility of applying the electronic document in the contravention process is not excluded, but on the contrary is quite possible.

We support the above by making the following assumptions:

1. The Contravention Code does not limit the meaning of the term „document" solely to „writing". Moreover, Article $313^7$of the Contravention Code (Excess of power in the case of documents in electronic form) penalises the refusal of a public authority or institution to receive, register or examine or to ignore a request, complaint, petition or notification on the reason that it has been submitted in electronic form, if it meets the content and form requirements provided for by the legislation governing electronic documents. Article 313^7 was introduced by Law No. 175 of 11.11.2021 and entered into force on 10.01.2022.

Paragraph (2) of Article 425 of the Contravention Code stipulates that factual elements established by the following means are admissible as evidence: report on the contravention, report on the removal of objects and documents, search report, report on the on-the-spot investigation, reports on other procedural actions carried out in accordance with this Code, explanations of the person in reference to whom the contravention proceedings were initiated, statements of the victim, witnesses, documents, audio or video recordings, photographs, forensic evidence, objects and documents removed, technical-scientific and forensic findings, expertise report.

As we can see, the legislator does not provide for a specific form for the procedural document, just as for the document which represents the actual evidence in the case.

This also allows us to use the exercise of documenting contravention cases through the use of electronic document generation sources, where the procedural document itself can have an electronic format.

2. The electronic document allows to avoid the problem of copies on procedural documents. However, any person having access to the electronic document can access it in original. This is why it is necessary to revise the concept of the contravention case. In this sense, the contravention case becomes a concept which only determines the framework of documents to be analysed with reference to a given contravention case, and which are relevant to it. The copying of material from the contravention case, as an action, will expire as a necessity.

3. The electronic document will allow the procedural act to be carried out, not necessarily in written form. This is because Article 2 of the Law on Electronic Identification and Trust Services [4, art.2] defines an *electronic document* as content in electronic form, in particular in the form of text or a sound, visual or audiovisual recording. Thus, if the electronic document itself is a form of the document, then the electronic document in turn has several forms. We mean textual form, sound recording, visual recording and audiovisual recording.

Thus, if until now, the on-the-spot investigation process has been carried out by drawing up a text of the report, usually in holographic form, then the electronic document, in the absence of a mandatory regulation, can also be carried out by means of an audiovisual recording.

In our opinion, such an operation would be faster, but also more objective, since the written word alone does not always represent the de facto situation at the scene of the crime. On the contrary, the audiovisual recording will also make it possible to perceive through words, spoken by the person investigating the crime scene, but also to be accompanied by video images prints simultaneously with the verbal description.

Such an on-the-spot investigation can save material resources and time, but it also reflects the situation much more thoroughly because it is able to capture on video or magnetic tape circumstances and objects that were actually at the scene and that may not have initially been noticed by the investigator.

4. The electronic document, once generated in the criminal and misdemeanour process, could not be destroyed and could only be modified or cancelled in the order and under the conditions provided for by law. In fact, this is not only a bureaucratic requirement, but also a procedural guarantee for the participants in the criminal and administrative offence process.

In this regard, the manager of the criminal or misdemeanour case will not be able to destroy a document that would reflect the execution of a procedural act, without leaving a trace. Namely, the digitised system of criminal and misdemeanour case management offers the possibility of preserving information about the documents that have been generated in the process. It is obvious that such an action as the destruction of the document confirming the procedural act carried out can also be contested, a matter that represents a mechanism for ensuring the rights of the parties to the process.

In the same sense, the application of the electronic document effectively excludes the act of falsification.

5. The management of criminal and misdemeanour cases by electronic document provides the possibility to monitor the access of persons to criminal case materials. Thus, if it is not possible to prevent unauthorised access to criminal case materials held in written form, then by imposing restrictions on access to the electronic document, such access can be limited, or at least monitored and recorded.

In the sense of the advantages identified, and with reference to the administration and recognition of the electronic document as evidence, we consider it necessary to make one further clarification.

This refers to the fact that in criminal and misdemeanour process we have as evidence documents that are created by third parties independently of the criminal and misdemeanour process, and some even before it, but we also have documents that are created in and in connection with the criminal and misdemeanour process. In the second case, we are talking about procedural documents.

Although in some specialised sources, the second category of documents are not assigned to the category of documents , without delving into the scientific content of the subject, however, in what follows we will refer to test documents that are the subject of interest in the process and are not generated in the process.

Thus, starting from the need to address the issue related to the peculiarities of the administration, examination and recognition of the electronic document as evidence in criminal and misdemeanour process, we note that the legislator does not establish express rules in this chapter.

And although there are no express rules on the process of taking, examining and recognising such kind of evidence [3, p.323], we cannot say that there is a lack of regulations in this respect.

However, as is clear from the essence of procedural law, the form of the document cannot condition the applicability of a procedural legal rule.

Thus, whether it is a holographic document or an electronic document, the rules of administration, assessment and recognition of the document as evidence will remain the same.

Nevertheless, given the essence and legal nature of the electronic document, it must be recognised that the process of administering, examining and recognising it as evidence in criminal

and misdemeanour process is accompanied by a number of peculiarities, some of which will be regulated in the future. We refer in particular to the following.

1. Concerning the location of the document. The legislator does not, after all, establish strict rules regarding the location of the document that is or is to be recognised as evidence. At the same time, in the criminal procedure law, but also in the contravention law, we identify certain conditions regarding the location of the document. We refer in this case to the provisions of Article 427 of the Contravention Code and **Article 126 of the Code of Criminal Procedure.**

Thus, Article 126 of the Code of Criminal Procedure establishes that the criminal investigation body, on the basis of a reasoned order, has the right to seize objects or documents that are important for the criminal case if the evidence gathered or the materials of the special investigative activity indicate exactly the exact place and person at whom they are located [1, art.126].

As we can see, the legislator establishes the possibility of considering the document to be lawful only if the criminal investigation body knows exactly where the document is located. It should be noted that a similar rule can be found in Article 427 of the Contravention Code.

It is obvious that the legislator in such a case has presumed the situation of a document written on a paper, which clearly has a definite location in space.

At the same time the electronic document is not located on a specific carrier, as it cannot be located in real space. It only has a location in virtual space.

Moreover, location is necessary to pick up the document written on a paper carrier, or the lack of knowledge of its location requires a search.

With reference to the electronic document, by definition it cannot have a definite location in real space, or the search also involves certain particularities.

From this, we conclude that the legislator should either amend the provisions of Article 126 of the Code of Criminal Procedure and Article 427 of the Contravention Code in order to provide that such a rule applies only to documents on paper carriers, or to exclude the condition of knowing with certainty in time the location of the document.

2. Regarding the manner in which the document has been included in the materials of record. In the doctrine, as in practice, the question of admissibility is frequently linked to whether reasons are given as to how the document was included in the case file. At the same time, perceptions of „file" are linked to the totality of the files compiled (stitched) monolithically in one or more volumes, in relation to which a record is kept (inventory) by number of files. With the concept of the electronic document as an element of the criminal record, the concept of „criminal record" or „contravention file" will also be reviewed. Thus, the contravention file or criminal file composed of electronic documents, including those generated in the framework of the contravention process, will not be the files themselves. They will only be references to the access code for consulting the document in cyberspace. Hence, access to the electronic file or to an electronic document will also be ensured by providing the access code, and not by presenting a photocopy or other copy representation. The court must also search the document by examining the document itself by accessing it, and not by physically examining a printed text or a photocopy or other reproduction.

3. Concerning the use of the term „extract" from the document. The term 'extract from a document' is used in the literature and in the practice of criminal investigation and judicial review of criminal and misdemeanour cases. In fact, this is only part of the text of the document, usually reproduced repeatedly, but which does not have the value of an original document. The extract is neither a copy nor an original. It is also not a document in the strict sense of the term, since it does not faithfully reproduce the text of the document, but only a portion of it. The reader of the document cannot know the original text, even suggestively, any more than he can know the whole text of the original document.

In this regard, we would like to point out that the legislator, through the provisions of Article 255 of the Code of Criminal Procedure [1], gives the extract the status of a separate document.

As a result of the legal text, the extract cannot be a representation of the original document, but only a new document, which does not include all the information from the original document. The extract is a duplicate of the original document, but does not contain all the information.

As far as the electronic document is concerned, the situation remains similar, because the issuer of the original document will issue another document, with different characteristics, but which will only represent a „fragment" of the original document.

Regarding the issue of severing the criminal and misdemeanour case, with the location of the document. One of the important problems in the criminal process, and even in the misdemeanour process, is the issue of severing cases. The practice reveals a series of difficulties, in particular those relating to whether or not the materials copied in the severed case are documents or whether they are to be assessed only as copies, as in fact they are.

It is considered that the introduction of the electronic document will eliminate this problem, as the severing of cases will not be accompanied by the need to physically move the document from one file to another. The electronic document will remain permanently in its place and access to it will be allowed irrespective of which file it is assigned to.

5. Regarding what we collect and how we collect the electronic document. One of the practical issues that we identify in the process of examining issues related to the electronic document as evidence, is the issue that the document written on the paper carrier can be taken from the place of its location and transported to another place, whereas the electronic document cannot be taken from its „place of location" and cannot be placed in „another place". Therefore, the key question arises namely what would constitute the picking up of an electronic document.

In our view, the pick-up of the electronic document would represent itself two basic operations:

– gaining access to the electronic document by the investigating officer or the investigating officer or another competent authority, and

– restricting (excluding) access to this document to other categories of persons, not involved in the process.

– We believe that such an approach would correspond to the legal essence of such a procedural action, where the main purpose of the seizure is not only entering into possession of the document, but also the possibility to possess it exclusively.

– Mostly, however, we are aware that there are many more problems and approaches related to this procedure.

In **conclusion** to the above mentioned, we come up with the idea that the introduction of the system of documenting misdemeanor and criminal cases through the use of the electronic document, imposes the need to amend a number of procedural rules, but the possibility that the legislator already offers today to apply the electronic document in the misdemeanor process is not ensured with adequate rules that we can find in the criminal and misdemeanor procedural law.

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IMPACT ASSESSMENT OF ENVIRONMENTAL FACTORS ON CRIME AND STRATEGIES FOR ENHANCING SAFETY IN COMMUNITIES

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Summary

In a society characterized by strong existential dynamism, it is particularly important to understand how the surrounding environment influences crime rates and what strategies can be implemented to promote safety in communities.

In the first part of the article, various categories of environmental factors that can influence criminality are explored, such as the physical characteristics of the urban environment, the quality of housing, and accessibility to social services. By examining the specialized literature from multiple research fields, we highlight the complex links between these factors and crime. This work does not allow us to detail and exhaustively treat the topic, so we highlight the most important elements to provide a general framework of understanding, synthesizing the essential aspects to facilitate further analysis and guide future research towards identifying effective solutions for reducing crime and promoting a safe environment in communities.

In the second part of the article, we present possible strategies and interventions for increasing community safety, based on understanding the relationship between environmental context and criminality. These include aspects of urban redesign and regeneration, the implementation of crime prevention programs, and the promotion of community participation, emphasizing the diversity of approaches and their adaptability to the specifics of each human entity.

The article also highlights the importance of continuous evaluation of the impact of environmental factors on criminality and the effectiveness of implemented strategies to enhance security. We underline the need for collaboration between researchers, managers, law enforcement personnel, and citizens to develop and implement sustainable solutions in the fight against crime and the protection of public safety.

Keywords: crime, prevention, environmental factors, strategy, public safety, community, antisocial acts.

Introduction. A comprehensive and accurate investigation into the factors influencing criminality cannot be conducted without an overarching examination that explores the subject from multiple disciplinary perspectives. The causes that lead individuals to commit antisocial acts are always multifaceted and must be addressed from sociological, criminological, biological, ethological, psychological, religious, legal (including police law), economic, anthropological, medical, geographical, urban planning, and even public policy perspectives. Understanding the complex nature of criminality is essential for systematizing all existing information (the variability of social and cultural contexts in which it occurs, triggering processes, connections, evolution), analyzing it, and identifying patterns to develop effective strategies for preventing and combating crime.

Sociological aspects allow for the evaluation of the community's role and social relationships in the perpetuation or reduction of criminality. The criminological approach focuses on the study of criminal behavior, victims, and criminal justice. Biological analysis explores possible genetic and neurological influences on antisocial behavior. Ethology provides insights into how humans adjust their behavior based on the environment and experiences, and how these adjustments can influence the likelihood of committing crimes or adopting antisocial behaviors. From

a psychological perspective, individual factors such as personality and trauma experiences that may contribute to deviant behaviors are investigated. Religions often promote a distinct set of social norms and values that can influence human behavior. The involvement of law in investigating the origins of antisocial behavior is important because it helps identify the factors that contribute to the emergence and perpetuation of criminal phenomena and provides a legal framework for effective interventions in its prevention and combat. Economic elements reveal the role of poverty, inequality, and limited opportunities in generating social conflicts. Anthropological concepts focus on cultural norms and traditions that can influence criminal behavior. The medical component examines possible links between mental disorders and criminal tendencies. Through the lens of geography and urban planning, the impact of the physical environment and the layout of communities on crime rates is investigated. Finally, the analysis of public policies explores the effectiveness of laws and programs aimed at preventing and repressing antisocial acts.

Crime, in a subjective sense, is a condition of will, mentality, emotions, and actions that indicate the offender's propensity to interact and react autonomously to psychosocial factors that arise in the environmental context [1, p.149]. This tendency reflects the individual's inclination to adapt to surrounding psychosocial stimuli in a way that may transcend the conventional constraints of social norms and circumstantial conditions. Thus, criminal behavior can be perceived as the result of a complex interaction between the individual's internal and external aspects, influenced by a variety of factors.

The architecture of criminality is tied to pragmatic reality, influencing the development of patterns and theoretical models that involve formulating an accurate, comprehensive, and conventional interpretation to allow for a concrete, statistical-mathematical evaluation of the phenomenon. In a scientific context, understanding and analyzing the structure of criminality by exploring the diversity and complexity of antisocial behavior in relation to the factors that influence it is an essential aspect in the development of criminological theories and in the formulation of public policies aimed at reducing crime incidence in society. This approach involves identifying and classifying behavioral patterns and models of offenders, as well as environmental and personal factors that contribute to the development and perpetuation of this phenomenon.

Thus, the impact of the cultural context on the biological structure in contemporary people manifests at the level of various organic systems, without fundamentally altering them, as the biological structure is ensured by morphophysiological sexual dimorphism, which provides each gender with a hormonal and physiological identity. Within each sex, there is a well-defined period in ontogenesis that ensures an optimum of reproductive qualities (biological and cultural), marking morphophysiological and psychosocial maturation. At the origins of human phylogeny, biological changes are dominant, but as culture develops and interposes itself between humans and their environment, its actions prevail, shaping the already imprinted biological terrain [2, p.210].

Methods and materials applied. To ensure a rigorous scientific approach to the subject, this article was developed by analyzing the specialized literature from all fields studying the etiology of criminality (systematic method), with the aim of identifying the environmental factors that generate and influence it, estimating the effectiveness of current strategies, and providing practical recommendations for their improvement. The logical method was applied to organize information and construct a coherent conceptual framework for analyzing environmental factors and community safety strategies. Additionally, the deductive method was used to derive specific hypotheses and observe causal relationships between environmental factors and criminality. During the research process, a critical approach was followed to examine the arguments and results obtained from the analysis of relevant data and statistics. These methods and approaches contributed to the foundation of the conclusions and recommendations presented in the material.

Discussions and results obrained. *Environmental Factors and Criminality*. Although there are opinions suggesting that the manifestation of aggression, particularly in its most severe form,

homicide, is an inherent trait of human life, unaffected by social structure, civilization, geographical location, or historical epoch [3, p.12], research highlights the importance of environmental factors and social context in determining criminal behavior. As a dimension of human conduct, the mere existence of violence cannot be conditioned; however, the types of antisocial acts, the geographical distribution of crime, its rate, temporality, types of offenders, community perception and reaction, and criminal profiles are elements that can undoubtedly be influenced by environmental context. A century ago, historian and literary scholar Prof. Stoica Teodorescu emphasized that „the geographical environment shapes the appearance of people, creates races around the globe, differentiates them in characteristic external traits, forms a mentality that also differs according to the diversity of geographical environments" [4, p.3].

The regularity with which criminal acts occur in certain geographical regions („thermal law" of criminality – Andre Michel Guerry and Lambert Adolphe Jaques Quetelet), the constitutional type (atavistic criminal theory – Cesare Lombroso, recapitulation theory – Ernst Haeckel), the fundamental bio-psycho-physical characteristics of the criminal (bio-psychic maladjustment theory – Olof Kinberg), psychological explanations (Freudian theory – Sigmund Freud), moral traits (criminal personality theory – Jean Pinatel), the social environment as an exogenous cause of criminal behavior (Alexandre Lacassagne, Karl Marx, Friedrich Engels, Gabriel Tarde), and multifactorial explanations (Enrico Ferri, Franz von Liszt) are just some of the directions followed by researchers to determine the variables that drive individuals toward antisocial behaviors.

Situational stimuli can directly influence behavior, suggesting that certain actions may lead to a favorable outcome (reward) or an unfavorable one (punishment). Conditions indicating a contingency link between a specific action and a particular result can motivate individuals to adopt behavior that brings them benefits and avoid negative consequences [5, p.159]. Human behavior can also be influenced by factors beyond situational stimuli, including psychological, socio-economic, and cultural factors. Regarding criminality, research has identified several elements that can contribute to the adoption of antisocial and criminal behaviors. These include the level of poverty and socio-economic deprivation, exposure to violence in the family or community, lack of access to education and employment opportunities, and negative examples from the culture and social environment in which the individual lives. Associating accepted behaviors with the groups individuals aspire to join or with desired identities is often an effective tactic. In the so-called „neighborhood effect," people living in disadvantaged areas tend to have more difficulties in various respects. Children in these areas show lower IQs and lower levels of verbal and reading skills, with more teenagers dropping out of school, displaying aggression, and committing crimes. The rates of depression, unemployment, excessive alcohol consumption, and mental health disorders are higher [6, p. 238]. Additionally, the lack of personal and professional development opportunities can exacerbate these tendencies, leading individuals to adopt deviant behaviors as a means of survival. Therefore, early social and educational interventions are essential for preventing criminality and reintegrating these young people into society.

Community characteristics, such as the level of urbanization, population density, discrimination against minorities and other categories of people, community infrastructure, access to social and economic services, impact citizens' attitudes towards criminal behavior. Deviance manifests through behaviors that violate established norms, whose adherence is ensured by social control mechanisms. This phenomenon affects the overall population's evolution, given the danger level and dysfunctions it causes in the collective structure. In the case of antisocial acts committed by minors, it is important to emphasize that, in the process of interaction and adaptation to the group, and more seriously, from its very beginnings, variables have intervened that pushed young people towards criminal behaviors, shaping them as individuals alienated from the community [7, pp.23-24]. Therefore, community characteristics, such as access to education and employment, the level of social cohesion, and the efficiency of law enforcement institutions, can

influence how citizens perceive and react to criminal behavior. For example, communities with poor infrastructure and limited social services may be more susceptible to crime, while those with a solid network of support and resources may offer greater resistance against deviant behaviors.

Certain physical environment indicators, such as housing quality, street lighting, the presence or absence of green spaces, are directly related to the likelihood of antisocial acts and encouraging offenders in their endeavor to break the law. There are traits of the intramural area of the locality (the street network, access points, and exits that constitute essential arteries for economic life, where many citizens' activities take place, etc.) that can facilitate committing crimes, the possibility of hiding offenders avoiding prosecution or execution of the sentence, or places where objects resulting from crimes can be stored. Areas of interest to the police also include the peripheral zones of localities, such as isolated or marginal houses, sheepfolds, dwellings, solitary cabins, abandoned wells, rest stops, campsites, train stations, deep mines, ditches, channels, aqueducts, viaducts, ponds, crops, agricultural product warehouses, and others [8, p.116]. These places, by their isolated or poorly monitored nature, provide a conducive environment for illegal activities and deviant behaviors. Additionally, poor infrastructure and lack of supervision contribute to increased crime risk in these areas.

Regarding the social and cultural climate, aspects such as educational level, social norms, tolerance for violence, and cultural values contribute to behavioral profiling. Biological and genetic factors can also play a role in a person's predisposition to violent or antisocial behaviors. Neuroscientific studies have highlighted connections between certain brain characteristics and aggressive or antisocial behaviors, suggesting that some individuals may have a biological predisposition to violent behaviors.

Furthermore, psychological factors, such as personality disorders, impulsivity, and lack of empathy, play an important role in the development of criminal behavior. Similarly, traumatic childhood experiences, such as abuse or neglect, increase the risk of adopting antisocial behaviors later in life. Substance abuse and alcohol consumption, as well as the availability of weapons, are elements that predispose to committing violent crimes.

Another important element in this context is migration, as changes in demographic composition and population mobility affect the dynamics and structure of crime in a community. Last but not least, police activities and judicial systems are significant factors in shaping criminality. The environment in which law enforcement and judicial institutions operate plays a crucial role in shaping criminal behavior. The results and availability of police forces affect both crime rates and citizens' perceptions of social safety, and the efficiency and fairness of judicial systems influence public trust in the criminal justice system. Society reaches a state of anomie, characterized by the effective absence of functional norms, although theoretically, these rules are formally stated in all adopted legislation. Essentially, there is a discrepancy between written provisions and their practical application, resulting in a normative void that affects social cohesion and order [9, p.113].

Thus, preventing and repressing crime largely depends on the effective collaboration between law enforcement authorities and judicial institutions. Additionally, appropriate public policies and legislative measures significantly contribute to reducing deviant behavior and maintaining a social context where public order is respected.

Strategies for Increasing Safety in Communities. Deviance, defined as a „disparate set of transgressions, disapproved behaviors, and marginal individuals", contradicts collective expectations, norms, and values, potentially leading to community sanctions [10, p.5]. Examples of such behaviors or actions include: crimes against property or individuals, committed individually or in groups, through violence, fraud, abuse, or other illegal methods; delinquent behaviors among youth; acts of suicide; substance addiction; inappropriate sexual behaviors (both heterosexual and homosexual) – rape, extramarital affairs, prostitution, homosexuality, nudism, pornography, sexual perversions, etc.; religious deviations (black magic, religious sectarianism); political devi-

ance (terrorism, political extremism); psychological disorders and deficiencies; physical disabilities; abuses; other forms of violence and prohibited or undesirable behaviors [11, p.5].

Manifestations of deviance, by their nature, threaten social cohesion and public safety. To effectively address these issues, well-structured and integrated methods to enhance public protection need to be implemented.

As a global science of space, economic geography relies on four main categories of indicators (quantitative, dynamic, restrictive, and potential enhancing) to assess the level of development of regions and localities. In their efficient administration, it establishes proportional correlations between economic growth and available resources, optimizing the dynamics of both categories so that social needs for goods are met, and nature maintains its capacity to regenerate values essential for modern society [12, p.71].

Thus, robust infrastructure not only supports economic development but also contributes to crime reduction by creating an atmosphere where danger is no longer felt by citizens. Well-planned investments reduce opportunities for criminal behaviors and can enhance solidarity.

Educational programs promoting positive social values and raising awareness among children and youth about the dangers associated with deviant behaviors reduce their incidence. At the level of the General Inspectorate of the Romanian Police, there is a department with structures at the county inspectorates, the Institute for Crime Research and Prevention. Among its responsibilities are examining the causes of crime and its various manifestations, conducting periodic studies and analyses on criminal trends, evaluating the actions and effectiveness of preventive measures, and developing and implementing programs, projects, or crime prevention campaigns that address different types of crimes [13, p.54]. However, preventive activities should not be limited to those carried out by public authorities. They are effective if they are also realized within the family, school, non-governmental organizations, private institutions, church, volunteer associations, and more.

Collaboration between the police, non-governmental organizations, and citizens creates an effective support and monitoring network, which can respond promptly to incidents and has the possibility to prevent their escalation. The way this relationship evolves influences the ability to implement the most suitable working methods, meant to meet the requirements imposed primarily by society and secondly by public authorities.

Community involvement in this process would complement the framework for functioning and cooperation precisely with those who are the subject of public order measures. Individuals can contribute both to ensuring and threatening and destabilizing it. Various prevention campaigns that include citizen participation, establishing a dialogue-based relationship, presenting the results of police activities, and being available to help those in need are just a few methods by which authorities can try to get closer to civilians [14, p.131-132].

A recent study revealed that the level of trust of citizens in the police forces is in decline. In a survey, respondents, members of the Romanian and Roma communities, were invited to evaluate police activity based on five criteria: consideration for citizens, professional competence, communication, using position for personal purposes, and equal treatment of all citizens. The conclusion indicates a decrease in trust in the police both among the general population and the Roma population compared to previous survey results. In the opinion of the participants, to gain community trust, authorities should provide impartial treatment regardless of origin or other characteristics, avoid corrupt practices, and respond promptly to reports. Individuals satisfied with police activity appreciate the respect shown, communication skills, and professional training level of law enforcement officers [15, p. 171-172].

Combating discrimination and promoting equal opportunities for minorities and vulnerable groups prevent marginalization and associated deviance. Community support projects are a suitable method for eliminating external determinants that contribute to delinquency, as they

ensure equal access to educational resources, employment opportunities, and health services. Implementing such platforms creates a favorable framework for the personal and professional development of all citizens, reducing the risk of involvement in criminal activities. Supporting access to quality education ensures the development of necessary competencies for active participation in economic and social life, thus diminishing the reasons leading to deviant behaviors. These efforts promote community integration, reducing tensions and conflicts that can arise from exclusion and discrimination, thereby creating an atmosphere of peaceful coexistence. Ensuring access to health services and psychological support for vulnerable groups contributes to preventing and managing mental health problems, which are often linked to criminal behaviors.

Promoting social inclusion also involves improving infrastructure and safe and accessible public spaces, encouraging interaction among individuals, thus reducing factors that could lead to antisocial behaviors. Investments in vocational training and personal development for disadvantaged groups ensure equal opportunities for all citizens. We must consider that the particularity of each conflict is determined by two main coordinates. The first refers to the general socio-economic and political context, including the misinterpretation of freedoms discussed in the social sphere, the possibility of collective affirmation and solidarity in promptly solving social problems, and socio-political instability, which has led to the inefficiency of state institutions' actions in managing conflicts. The second direction is given by the specific conditions of the locality: geographic area, economic situation of the residents, crime level, intensity of accumulated tensions, and the severity of the triggering act of the conflict [16, p. 119].

On the other hand, using technology and data analysis to evaluate crime patterns and develop evidence-based preventive interventions is a means of action for controlling the contextual components of criminality. Continuous and detailed monitoring of data allows the identification of high-crime areas, helping authorities to allocate resources appropriately and prioritize interventions according to the specific needs of each community. Data analysis facilitates understanding criminal dynamics and identifying risk factors, as well as the times and places conducive to committing crimes. Advanced technologies, such as artificial intelligence and predictive analysis, enable forecasting criminal behaviors and proactive intervention before situations escalate, thus reducing the number of crimes. Integrating and correlating data from different sources, such as police reports, demographic data, and social statistics, provides a comprehensive picture of the criminal phenomenon, allowing a holistic approach in the fight against crime.

Transparency and data accessibility to the public contribute to increasing trust and collaboration between authorities and communities, involving citizens in the crime prevention process and encouraging incident reporting and active participation in maintaining public order. Monitoring and analyzing data help identify emerging trends and deviant behaviors, allowing for the rapid implementation of preventive measures and the adaptation of public safety policies according to crime developments. Accurate and updated data contribute to the development of evidence-based public policies that directly address the causes of crime and promote sustainable and operational solutions. Continuous monitoring and analysis of information allow for a rigorous evaluation of the impact of implemented measures, providing constant feedback and the possibility to optimize interventions to maximize positive outcomes.

Organizing public campaigns to inform and mobilize the community against deviant behaviors and promote civic engagement is a fundamental way to intervene on environmental elements that cause increased crime. Prevention programs help educate citizens about the causes and consequences of criminal behaviors, instructing community members on the importance of avoiding, reporting illicit acts, and adhering to legal norms [17, p.71]. By disseminating relevant and accessible data, these campaigns encourage citizens to adopt responsible behaviors and become proactive partners in maintaining public order and safety. Familiarizing individuals with issues associated with delinquency and involving them in prevention actions create a hostile environment

for offenders and reduce the incidence of undesirable behaviors. Public campaigns promoting dialogue and cooperation between citizens and local authorities encourage the former to accept and develop a consistent collaborative relationship, essential for preventing and combating antisocial acts. Informing the population about available services for crime victims and protection and assistance measures reduces vulnerability and provides support to those affected, contributing to a decrease in recidivism rates. Civic engagement and collaboration with authorities in crime prevention improve the efficiency of public safety measures and enhance the community's capacity to respond quickly and effectively to criminal threats.

Ensuring an appropriate legal framework and strict enforcement of laws discourage criminal behaviors and protect the rights and safety of citizens. Clear norms and coherent policies provide a solid guide for citizen behavior, creating a sense of order and predictability in the community. Adopting programs that promote transparency and accountability of authorities contributes to increasing public trust in the justice system and law enforcement, reducing social tensions and potential conflicts. Policies favoring social integration and equal opportunities help diminish marginalization and discrimination, factors that often underlie delinquency. Implementing clear standards for police interventions and crisis management creates better community protection and prevents abuses of power.

The negative impact of environmental factors on crime is also mitigated by legislation supporting rehabilitation and reintegration programs for former inmates. This legislation plays an important role in reducing recidivism and encouraging their efficient social reintegration. Educational and vocational training programs, well incorporated into crime prevention procedures, ensure the development of essential skills and create legitimate employment opportunities for vulnerable populations. Disseminating legislation regulating access to resources and services, such as health, education, and housing, creates a harmonious societal context, thus avoiding an increase in deviant behaviors.

There are several social consequences with serious implications for national security that call for intervention at all levels of public order maintenance. Drug trafficking has caused more deaths than armed conflicts, with millions currently facing drug addiction, generating social and familial adaptation difficulties, significant material losses, serious health problems, and, additionally, intensifying violence and crime rates. Simultaneously, millions of individuals have suffered severe violations of their rights and freedoms, being turned into commodities. Men, women, and children are trafficked for purposes such as prostitution, slavery, or organ harvesting. Waves of migrants create imbalances in the labor market in destination countries. With these waves of migrants, diseases can be transmitted, and foreign criminals can enter the country, turning destination areas into crime enclaves.The countries from which the migrants come lose significant investments made in the education and training of individuals who leave the country. A significant percentage of refugees have at least a high school education and often use their education in jobs in destination countries, frequently performing unskilled labor. Through organized crime groups, large quantities of weapons reach the hands of dangerous individuals or terrorist groups, endangering public order and societal safety [16, p. 64-65].

The involvement of young people in constructive activities and the provision of mentorship and support prevent juvenile delinquency and promote their healthy and responsible development. Mentorship programs provide young people with positive role models and guidance, contributing to creating a sense of belonging and emotional stability, which discourages involvement in criminal activities. Offering educational and personal development opportunities within these programs encourages learning and the development of skills for adaptation in society and the workplace.

By creating a framework of assistance, mentors help develop a positive attitude toward the educational process and improve young people's academic performance, reducing the risk

of school dropout and association with delinquent groups. Extracurricular, sports, and cultural activities organized within mentorship programs promote a healthy use of free time, preventing boredom and lack of direction. The emotional support and counseling provided by mentors help young people overcome personal difficulties and manage stress and conflicts constructively, reducing vulnerability to negative influences and peer pressure. Additionally, active participation in mentorship programs encourages young people to discover and harness their talents and interests, channeling their energy and creativity into positive and constructive directions.

Conclusions. Erich Fromm asserted that contemporary individuals experience loneliness, isolation, and insignificance. The fundamental needs of human beings aim to eliminate these feelings of isolation and promote a sense of belonging and discovering a purpose in life. Paradoxically, the increasing freedom gained over the centuries, both from nature and social structures, has intensified feelings of loneliness and isolation. Excessive freedom becomes a negative state from which individuals try to escape. It is as if the excess of freedom has become a chain binding people rather than liberating them [18, p.332]. This paradigm of growing freedom has transformed the free individual into a captive of their own choices, in a world where an abundance of options has not brought fulfillment but rather a state of existential restlessness. From this perspective, isolation and loneliness are not just emotional states but also reflect a crisis of authentic human connections and communities.

Thus, the contemporary individual is caught between the desire for freedom and the need for belonging and genuine connection. As society has evolved, human relationships have become increasingly superficial and fragmented, and modern technology, while connecting people, often accentuates feelings of isolation and emotional distance.

Environmental factors and social context exert a significant influence on criminal behavior, contrary to the notion that aggression manifested as delinquency is an inherent trait of the individual. The importance of these variables in determining types of antisocial acts, the geographical distribution of crime, and other aspects related to criminal behavior is recognized. Research has highlighted that the physical and social environment affects the frequency and nature of antisocial acts within a community.

Therefore, it is important to understand the connections between environmental factors and crime to develop strategic prevention and intervention plans. Studying these links can help identify vulnerable areas and appropriate interventions to reduce crime levels and improve the quality of life in communities. By examining the influence of the environment on criminal behavior, projects and initiatives can be formulated to address related issues and promote risk-free environments. It is essential to examine, understand, and evaluate the complexity and interactions between environmental factors and to be well-versed in how they can influence human behavior.

In conclusion, deviant behavior in an individual can be reduced by engaging in social, educational, cultural, constructive, and spiritual activities [19, p.67], which encourage personal development and interpersonal relationships. These initiatives not only provide constructive alternatives to antisocial behaviors but also contribute to forming a sense of belonging and responsibility within the community.

Thus, we once again emphasize the necessity of addressing the issue of deviant behavior in a multidisciplinary and systemic manner, integrating multiple fields and resources to ensure a lasting and positive impact on the individual and society.

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THE ROLE OF SPECIAL INVESTIGATIVE MEASURES IN THE APPLICATION OF NON-CUSTODIAL PREVENTIVE MEASURES

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Summary

In this article, emphasis has been placed on the importance of Special Investigative Measures (SIM) in ensuring a functioning and fair judicial system. Special Investigative Measures are of crucial importance in the implementation of non-custodial preventive measures in the Republic of Moldova, especially for latent crimes in which proactive investigations are carried out. They are established to facilitate the efficient conduct of criminal proceedings while respecting the individual rights and freedoms of persons involved in the investigation. The purpose of these measures is to provide prosecution authorities and courts with the necessary tools to gather evidence and obtain information essential for a full and impartial investigation.

SIM's encompass various techniques, such as technical supervision; interception and recording of communications and/or images; detaining, investigating, handing over or seizing postal items, etc., which have a crucial role in reacting quickly and efficiently to crimes, contributing to preventing and combating them including when they are committed, thus preventing irremediable consequences. Consequently, SIM also helps both to apply non-custodial preventive measures and to reduce overcrowding in prisons while lowering the costs associated with the prison system, offering effective alternatives to preventive measures involving deprivation of liberty. It is imperative that the use of SIM always respects individual rights and is proportionate to the seriousness of the alleged crime, thus avoiding abuses or excessive use of power. Finally, by following a responsible strategy in managing the SMI, the institutions can ensure respect for individual rights and support the promotion of the principles of a democratic and fair society, while guaranteeing the efficient and balanced functioning of the judiciary.

Keywords: special investigative measures (SIM), alternative forms of preventive measures, promotion of a just and equitable society, use of technology for monitoring, fighting crime, balance in the functioning of the justice system.

Introduction. In a society based on the principles of justice and equity, the implementation of preventive measures that do not involve deprivation of liberty is crucial both for the proper and efficient functioning of the judicial system and for ensuring respect for human rights and fundamental freedoms. In this context, Special Investigative Measures (SIM) become essential, providing innovative methods and strategies for crime management and prevention, including allowing the efficient administration of evidence necessary to order preventive measures. SIM's encompass a diverse range of techniques and procedures used by authorities to investigate criminal activities, with direct interference with the personal freedom of individuals. Such measures may include technical surveillance; interception and recording of communications and/or images; detaining, investigating, handing over or picking up postal items.

It is crucial to note that preventive measures can only be imposed after the initiation of criminal prosecution or criminal proceedings according to the provisions of Art. 279 para.(1) CC RM and can be applied throughout the process. These measures are indispensable to guarantee a fair and impartial judicial process, as well as to prevent acts of criminal evasion, by disrupting

the process of taking evidence and, last but not least, by evading the suspect, accused or defendant from criminal prosecution. One of the basic roles of SIM in applying preventive measures not involving deprivation of liberty is to enable authorities to react quickly and efficiently to crimes, without affecting the individual freedom of the persons involved. By using these techniques, authorities can obtain relevant and often crucial information to prevent and combat crime, without requiring pre-trial detention of suspects.

Also, collecting through SIM the evidence necessary to apply preventive measures contributes to reducing overcrowding in prisons and lowering the costs associated with the penitentiary system. By offering effective alternatives to detention, such as preventive non-custodial measures, SIM enables the individual to remain in his community, maintain social ties and continue his contribution to society, while being subject to appropriate monitoring and interventions by the authorities, so as not to jeopardize the criminal procedural activity. It is crucial to stress that the use of SIM must always respect individual rights and be consistent with the principles of human rights and the rule of law. Such measures should be applied only where absolutely necessary and proportionate to the seriousness of the alleged criminal offence and supervision must be subject to control, including judicial control where provided for by law, appropriate to prevent abuses or excessive use of power.

Methods and materials applied. This investigation adopts a qualitative research approach, grounded in content analysis. The distinctive feature of this method lies in its ability to highlight the perspectives and experiences of people involved in the implementation and management of preventive measures, these being legal professionals, such as judges, prosecutors, lawyers, police officers, as well as other key persons involved in the functioning of the judicial system.

The opinion of experts in related fields, such as criminology and human rights, will also be taken into account. The data collected through the interviews will be analyzed using content analysis methods, with a focus on identifying and interpreting the main emerging themes and models associated with the role and impact of MSI in applying preventive measures not involving deprivation of liberty.

Discussions and results obtained. According to Article 176(1) of the Code of Criminal Procedure, preventive measures may be ordered by the prosecutor, either on his own initiative or on the recommendation of the criminal investigation body, or, as the case may be, by the court, only in situations where there are sufficient reasonable grounds, supported by evidence, to assume that the suspect, accused person could evade the action of the criminal investigation body or court, influence witnesses, destroy or damage evidence or impede the establishment of the truth in criminal proceedings, or commit other crimes, or that his release would cause disturbances in public order [1].

According to the case-law of the European Court of Human Rights, there is an assumption in favour of freedom for persons for whom the possibility of pre-trial detention is being considered. National courts are obliged first to consider the possibility of applying a less restrictive preventive measure that is rational and proportionate to the circumstances of the crime. Therefore, justifying the actions taken by State prosecutors is a difficult task, requiring considerable efforts to outline succinctly the essence of criminal cases and to provide credible reasons to support pre-trial detention.

In view of this objective, it is imperative to carefully assess the essence of each risk individually, taking into account the practice of the European Court of Human Rights, in order to avoid arbitrary or even abusive use of these risks in practice. In the case of *Becciev v. Moldova*, the European Court stressed that the danger of a defendant absconding cannot be determined solely on the basis of the seriousness of the punishment with which he is threatened to receive. It must be assessed by taking into account numerous other factors which may confirm or, conversely, mini-

mise the risk of evasion, so that pre-trial detention is not justified until the time of trial.

The danger of evading must be examined in relation to aspects such as the person's character, personality, place of residence, occupation, property owned, family relationships and any other links with the country in which he is being pursued. While the severity of the anticipated sentence and the strength of the evidence may be relevant, they are not decisive and the possibility of obtaining safeguards may be considered to compensate for the risk. It must be assessed taking into account various aspects relating to the character and personality of the individual, his/her domicile, occupation, property owned, family ties and any other connections to the country in which he/she is being pursued.

The severity of the anticipated sentence and the weight of evidence may be relevant but not decisive, and the possibility of providing safeguards may be considered to compensate for this risk. The Court also ruled that if an arrested person can provide sufficient guarantees that he will not escape, then he should be released [2].

Analysis of these circumstances is not always possible at an early stage of prosecution. The individual's criminal history can be one of the reference points for forming an opinion about the need for his arrest.

In this context, the risk of evading must be proven by evidence, such as information on violation of other alternative preventive measures, attempts or preparations to evade prosecution, apprehension of criminals while they try to leave the locality or even the country. The statements of witnesses or other suspects or accused persons may also provide relevant information about the person who may require isolation from society for the proper conduct of the criminal proceedings. Last but not least, such evidence can be collected through SIM, for example the content of discussions, which results in the intention to destroy evidence or to evade prosecution; the results of the technical surveillance in which the movement to leave the country is fixed; content of computer data resulting in influencing other participants in the process, etc.

In the following example, the investigating judge, in the justifying part of the decision regarding the extension of the preventive measure – respectively preventive detention – makes some relevant observations, despite not considering the evidence presented by the prosecutor. "[…] in this case it is also guided by the jurisprudence of the European Court which indicated as a basic and accessible condition for the detention of a person in preventive detention it is when it is suspected or accused of committing a crime, when the risks stipulated by the ECHR persist". National courts "must examine all the circumstances for and against the existence of a necessity of public interest what would justify, taking into account the presumption of innocence principle, deviation from respect for individual freedom, these being taken into account in the decisions regarding the requests for release". In the given case, the court finds that deprivation of liberty when the preventive measure is extended against the accused – preventive detention, it is justified, grounded and necessary, because it is aimed at preventing the accused from taking some actions capable of influencing witnesses who have not yet been heard due to the lapse of a short period of time from the moment of detention to the moment of submitting this request for the extension of preventive detention. The need to extend the preventive measure against the accused – preventive detention – it is explained by the fact that the deprivation of freedom in the given case of the accused is provided by law, it is necessary in a democratic society and pursues a lawful aim" [3].

As in the case of other risks, the argumentation must be presented in all procedural documents, in particular in the request of the prosecutor for the application of the preventive measure, and the persistence of this risk must be justified in the conclusion of the investigating judge at the prosecution stage or by the judge examining the case on the merits, i.e. at the trial stage [4, pp.22-34], or, of course, in the acts of the prosecutor when the application of preventive non-custodial measures falls within his competence. It is indisputable, when a person commits a crime with pre-

meditation, he manifests a much greater social danger, since he acts intentionally and often with planning, committing a reprehensible criminal act that contravenes criminal rules.

Depending on the evolution of the act, it can lead to more severe criminal consequences, causing significant damage to the values and interests protected by criminal law. That is why the need has arisen to institute specific legal treatment, tailored to the person who knowingly and deliberately violates the criminal law.

Both those who respect the law and those who break it, will feel protected in terms of their rights, with the assurance that they will not be violated, at least through special methods of investigation. However, there is a complex interdependence between guaranteed safety for the rights of law-abiding persons and the potential risk of violations of these rights by offenders in criminal activity [6. pp.176-185].

This is true in the context of efforts to protect human rights by restricting special investigative work. For this reason, it is essential to identify a clear and predictable legal framework for special investigative activity, which excludes any possibility, even hypothetical, of human rights violations, without, however, discouraging the effectiveness of this essential activity in combating crime [6].

A crucial aspect in this process falls to the prosecutor, who, due to his competence in criminal proceedings and special investigative work, bears particular responsibility for the identification and effective use of legal instruments. Legislative innovations in the field of special investigative activity and the evidentiary value of its results have a significant impact on society, which underlines the importance not only of analysing existing regulatory instruments, but also of improving them to ensure both respect for human rights and efficiency of investigative work [6].

In present, the need to address this topic is of utmost importance, especially with regard to the mechanisms used by the legislator to achieve the proposed objectives, which is also the purpose of this study. It is clear that, at present, it is not the lack of an adequate legal framework that constitutes the main challenge, but rather the absence of effective mechanisms for its implementation, which makes laws remain mere declarations of intentions, without providing effective tools for regulating social relations [6].

Currently, the prosecutor is practically the only legal actor empowered to participate not only in all stages of the criminal process, but also in the special investigative activity, which underlines his particular responsibility for ensuring compliance with the rules of law in carrying out this essential activity [6].

The investigation of crimes, as well as other complex activities, involves the use of specific means, modalities and techniques to achieve the desired results. The tactical competence of the prosecuting officer is crucial to avoid errors, improve the quality of the investigation, minimise the number of undiscovered crimes and ensure respect for the fundamental rights and freedoms of the individual.

Therefore, familiarisation and application by the prosecuting officer of forensic methods for investigating crimes, such as the complex approach and factorial analysis, will contribute to the development of effective crime investigation methodologies. Implementing these techniques will save time, effort, resources and funds. Special investigative measures are therefore a fundamental part of the modern judicial system, providing authorities with the necessary tools to intervene effectively in criminal cases without disturbing the individual freedom of the persons involved [5, p.732].

Through their responsible and balanced application, these measures contribute to ensuring an impartial criminal process and crime prevention, promoting the values of a just and democratic society. We can conclude that in the procedure for applying or prolonging measures involving restrictions on the freedom of the individual, it is essential that each risk justifying deprivation of

liberty be supported by relevant and definitive evidence. Moreover, in motivating actions to apply or prolong preventive measures, account must be taken of both the case-law of the Constitutional Court and previous judgments of the European Court of Human Rights, an integral part of this complex process [7. pp.202-203].

It is vital to pay particular attention to respect for individual rights during the application of these measures in order to avoid any abuse or violation thereof. Thus, respect for the principle of presumption of innocence and the right to a fair trial must be fundamental in deciding whether to apply or extend preventive measures.

Moreover, transparency and accessibility of judicial proceedings for those involved are essential to maintain trust in the judicial system and the rule of law as a whole. It is important that the reasons and justifications for decisions are clearly explained and adequately communicated to stakeholders and the general public in order to ensure transparency and accountability in the judicial process.

As regards the protection of home and correspondence, the European Court of Human Rights (ECHR) has repeatedly stressed that interception of a person's conversations, including telephone conversations, and other special measures fall within the scope of the autonomous notion of privacy, thus enjoying the protection provided in Article 8 of the European Convention on Human Rights (ECHR) [7].

It is essential to strike a delicate balance between protecting the privacy of the individual and the need to apply special investigative measures in order to combat crime and maintain public order. Such measures, when used in accordance with the principles of the rule of law and respect for the fundamental rights of the individual, can be an effective tool in the fight against serious crime and in ensuring public security.

However, it is important to set clear limits and put in place appropriate safeguards to prevent abuses and violations of individual rights in the framework of special investigative work. This implies compliance with legal procedures and international human rights standards, as well as subjecting the actions of law enforcement authorities to rigorous and independent judicial scrutiny.

It is therefore essential that national authorities use these measures with caution and in accordance with the principles of the rule of law, while ensuring that individual rights are protected and respected in all circumstances. This implies the implementation of effective supervision and control mechanisms, as well as the development of transparent and accessible procedures for challenging and reviewing decisions taken within the framework of special investigative activity.

In order to assess the proportionality of the intervention of national authorities in such cases, several specific factors are analysed. Although the law does not expressly require the application of a proportionality test in the content of the conclusions issued following the examination of requests for authorisation or legalisation of special investigative measures, as provided in Article 305 of the Criminal Procedure Code (CPC), it is essential to carry out such a test [7].

The purpose of this proportionality test is to assess whether intervention by authorities in the private lives of individuals is appropriate and necessary in a democratic society, taking into account the aim pursued and the degree of interference with individual rights and freedoms. It is therefore crucial that the authorities demonstrate that special investigative measures are justified and proportionate to the legal and social objectives pursued.

It is important to stress that the application of this proportionality test should not be a formality but a detailed and rigorous assessment of the potential impact of special investigative measures on individual rights and the balance between the legitimate interests of the State and the protection of citizens' privacy.

Thus, in the absence of clear legislative provision on the application of the proportionality

test, courts and competent authorities should develop and apply standards and guidelines to ensure respect for this fundamental principle of human rights and the rule of law when authorising special investigative measures.

The examination of requests to authorise special investigative measures in the case of alleged violations of the rights and freedoms guaranteed by the Convention involves the application of a triple proportionality test. This test aims to determine whether the intervention of national authorities was provided for by law, necessary in a democratic society, and is in line with the requirements set out in ECHR case-law, which calls for proportionality between the intervention applied and the aim pursued [7].

By applying this test, it shall be ensured that any interference with individual rights and freedoms is justified and proportionate, aiming at protecting public order and combating crime in a manner that respects fundamental principles of human rights and the rule of law.

It is essential that competent authorities carry out a careful analysis of all relevant aspects before authorising special investigative measures, ensuring that they comply with international standards and legal provisions in force. This guarantees both the protection of individual rights and the effectiveness of investigations in combating crime and maintaining public order.

Moreover, the application of this triple proportionality test contributes to building trust in the judiciary and respect for fundamental rights in a democratic society. It is therefore essential that authorities pay particular attention to compliance with these principles when authorising special investigative measures.

In view of these considerations, it is important to supplement Article 306 of the CPC with provisions relating to the inclusion in the content of the investigating judge's conclusions of the proportionality test between the actions and measures sought for authorisation and the aim pursued by those legal levers.

Conclusion. Special investigative measures are not only a tool in the fight against crime, but also a way to ensure respect for fundamental principles of human rights and the rule of law in criminal proceedings. They enable authorities to act effectively to prevent and combat serious crime, while protecting individual rights and striking a balance between the need for justice and respect for citizens' privacy.

An important aspect of special investigative measures is that they are subject to rigorous criteria for assessing proportionality and necessity so as to minimise interference with individual rights. Those criteria include an analysis of the legality of the intervention, its necessity in a democratic society and proportionality between the aim pursued and the means employed.

By applying those criteria, authorities can ensure that special investigative measures are used only where absolutely necessary and proportionate to the objectives pursued. It contributes to maintaining public trust in the judiciary and respect for individual rights, thereby strengthening the foundation of a just and democratic society.

It is very important to remember that special investigative measures are a crucial aspect of the criminal process, providing authorities with the necessary tools to enforce the law and protect society from crime, while firmly respecting the individual rights and freedoms of citizens.

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FORMS OF MANIFESTATION OF TERORRIST ACTIVITY ACCORDING TO THE LEGISLATION OF THE REPUBLIC OF MOLDOVA

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Summary

Terrorist activity, in its diverse forms of manifestation, is the subject of study in several research fields, being recognized as one of the most serious threats to national, regional, and sometimes international security. Terrorism, as a negative social phenomenon, has long been used to achieve political, social, ethnic, religious, and other goals. Cases of terrorist methods being applied against opponents or third parties to promote one's own ideology or achieve certain objectives are quite common. The methods employed by terrorism adherents are constantly evolving, becoming increasingly dangerous and detrimental to the values and social relationships protected by the state.

One of the specific traits of terrorism is the continual diversification of its forms of expression and the modification of its modus operandi. In such circumstances, in-depth research into this phenomenon is necessary, including providing theoretical support for understanding the essence and particularities of terrorism. Conducting comprehensive studies in this area can contribute to the development of effective mechanisms for detecting, preventing, and countering the various manifestations of terrorism.

Keywords: terrorism, terrorist activity, terrorist character crimes, juridical regulation of the terrorist character crimes, forms of terrorist activity, the concept of terrorist activity, cooperation in combating terrorism.

Introduction. Terrorist activity, expressed through a variety of actions, poses a major threat to the values and social relationships protected by current legislation. Currently, terrorism is universally recognized as one of the most complex and dangerous forms of criminal activity, requiring thorough multidisciplinary studies of various aspects such as genesis, evolution, tactics, and goals pursued by it etc.

Internationally, there are significant divergences in the perception of the notion, essence, particularities, and other features of terrorism. Opinions expressed in specialized literature range from perceiving terrorism as a criminal phenomenon or a social phenomenon to recognizing it as a profound ideology. Simultaneously, proponents of terrorism perceive it as a method of struggle, a way to make themselves heard, a method to impose their own opinions, beliefs, a method of coercion for conflict resolution, a method of promoting their own interests, etc. [7, p.93].

In turn, Covaliov V.A. describes three ways of perceiving the essence of terrorist activity:

– as a specific method of military actions, defined as armed social-political conflict;

– as a type of crime, highlighting its criminal aspect;

– as a form of political struggle, arising from social-political protest [11, p.10].

We argue that these statements confirm the complex nature of terrorism as a social phenomenon, as well as the forms of its expression. Moreover, the scale of terrorism, the seriousness of its consequences, and the increased social danger of recent terrorist acts require the attention of scientists, representatives of special services, and officials from law enforcement agencies to focus on conducting comprehensive research on the phenomenon in question. This necessity also

arises from the fact that terrorism has become a global problem in recent decades, endangering the security of states and even regions of the world, thus necessitating the imperative of unifying the efforts of the international community and directing them towards combating this destructive phenomenon.

However, any activity can only become efficient and productive through theoretical substantiation of practical needs. For this reason, although various aspects of terrorism have been studied to date, there still remain unexplored areas, incomplete research, including due to the complexity of terrorism, distorted perceptions of the same phenomena by different subjects, and the persistence of tendencies to justify certain actions, organizations, groups, etc.

To ensure the methodological needs of terrorism prevention and counteraction activities, it is important to recognize that terrorism, in any situation, is based on firm ideological principles and, generally, on a strong ideology. We believe that until a stable stereotype of perceiving terrorism as an illegal, immoral, and unjust act is created, it will be difficult to de-ideologize it, and without undermining confidence in the possibility of resolving various conflicts through terrorist methods, terrorism will not be stopped. Obviously, by committing a terrorist act, more social relations or values protected by criminal law can be violated and/or endangered more so than in the case of other crimes. Terrorism endangers even the internal stability of the state and, sometimes, international security as well [5, p. 128].

The analysis of terrorism dynamics allows us to conclude that it has surpassed the boundaries of national territories of states, becoming a serious threat to humanity and affecting social, political, interethnic, economic relations, national interests, etc. The investigation of factors contributing to the development of terrorism, including heightened social tension, nationalism, separatism, religious extremism, etc., demonstrates that counter-terrorism activity should be the main subject not only on the agenda of special services and law enforcement agencies, but also of a wide range of authorities, bodies, institutions, organizations, associations, including civil society, etc.

In this context, the need for combining the efforts of national and international bodies, as well as civil society, becomes clear, as only through joint and well-coordinated efforts can positive results be achieved in preventing and countering the phenomenon of terrorism.

In this line of thought, the role of the state in the event of terrorist crimes is of particular interest. Generally, when crimes are committed within the state's territory or concerning its citizens, the state intervenes, through its exclusive authority, to maintain public order and restore social equity. In the case of terrorism, besides the mentioned aspects, the state, in most cases, involuntarily becomes a "party" to the conflict because, practically always, the demands, objections, or claims are addressed to the state or certain state bodies. As the state is directly involved in the conflict, it is compelled to intervene in a specific manner, compared to cases of other types of crimes.

This principle is enshrined in the general legislative provisions of other states, which maintain that society must defend itself against all actions that cause harm or, in other words, threaten established order. To prevent those intending to commit such acts and to limit those tempted to imitate them, society punishes them. It becomes clear that society reacts only towards those who act or have already acted when the discussion turns to sanctions.

Therefore, since terrorist activity is currently characterized by alarming proportions, often resulting in serious consequences and affecting the main values protected by the legal norms established in society, state authorities are compelled to adopt and undertake a wide range of measures aimed at detecting, preventing, and combating factors that can generate or stimulate the practice of this kind of activity.

Republic of Moldova, being spared from this vice of most modern societies, should take concrete measures aimed at preventing the establishment of extremist ideologies and tendencies to resolve difficulties through violent means. For this reason, it is necessary to pay increased at-

tention to counter-terrorism activities manifested in the implementation of prevention programs, as well as those aimed at fortifying potential targets of terrorists, as losing control of the situation in this case will have major negative consequences. Focusing on diversifying counter-terrorism measures, with an emphasis on their preventive character, is preferable, including from the perspective of avoiding extraordinary expenses directed towards investigating cases of terrorist acts and eliminating their consequences.

However, the effective implementation of complex and efficient counter-terrorism activities is difficult to achieve without understanding the essence, forms of manifestation, and specificity of terrorist activities.

To ensure the protection of individuals, society, and the state, the legislator of the Republic of Moldova has undertaken a set of actions aimed at counter-terrorism protection. Specifically, among the mentioned measures, we will specify the adoption of the Law on Prevention and Combating Terrorism No. 120 of 21.09.2018 and the introduction of amendments to the Criminal Code, by including Art. 13411, entitled "Terrorist Offense".

The Law on Prevention and Combating Terrorism expressly defines the notion of terrorist activity and specifies its forms of manifestation, without, however, defining this concept.

According to the provisions of the mentioned legal act, terrorist activity is manifested in the following forms:

– planning, preparation, attempted commission, and commission of a terrorist act or another act constituting a terrorist offense;

– formation of an illegal armed formation, a criminal organization, an organized group for the commission of one or more terrorist offenses;

– recruitment, facilitation, arming, training, and use of terrorists;

– rallying to terrorist organizations or participation in their activities;

– financing the preparation or commission of a terrorist act or another terrorist offense, financing a terrorist organization, terrorist group, or terrorist, as well as providing support to them by other means;

– provision of informational or other support in the planning, preparation, or commission of a terrorist act or another act constituting a terrorist offense;

– incitement to terrorism, public justification of terrorism, propaganda of terrorist ideas, dissemination of materials or information inciting terrorist activities or justifying the conduct of such activities;

– any of the aforementioned actions performed through information systems and electronic communications networks;

– any other acts constituting terrorist offenses.

In the same context, the legislator also mentions the notion of international terrorist activity, which implies terrorist activities carried out by a terrorist, a terrorist group, or a terrorist organization on the territory of two or more states, causing harm to the interests of these states and/or international organizations; by the citizens of one state against the citizens of another state or on the territory of another state; in cases where both the terrorist and the victim of terrorism are citizens of the same state or of different states, but the offense was committed outside the territories of these states [2, art. 3].

According to Dmitriev A., the content of terrorist activity is much broader than described by the legislator and can manifest through a wide spectrum of actions, including: organizing, planning, preparing, and committing terrorist acts; inciting terrorist acts, violence against individuals and certain organizations, destruction of material objects for terrorist purposes; creating illegal military formations, a criminal community (criminal organization), organized group for the commission of terrorist acts, as well as participating in such acts; recruiting, arming, training, and using terrorists; knowingly financing terrorist organizations, terrorist groups, or providing other support to them;

seizing and maintaining power by force in states with "illegal" regimes from the terrorists' point of view; organizing armed rebellions and government overthrows with the combatants from religious extremist organizations aiming to create "correct" states according to terrorists; engaging in political or religious struggle using physical violence; committing spontaneous terror through explosions and shootings in crowded places, predominantly civilian, to instill fear in society and undermine trust in state authorities; explosions, arson, destruction of buildings, public institutions, foreign diplomatic representations and their affiliates, technical objects, and cultural values to destabilize the socio-political situation and demonstrate operational capabilities; kidnapping and hostage-taking to impose demands on state authorities, threatening violence against hostages; threatening with diversions and damage to vital security objects, important industrial enterprises, as well as using weapons of mass destruction to influence state authorities and impose their demands; creating international and regional bodies to plan terrorist activities, prepare and carry out specific operations, organize interaction between separate groups and executors involved in a specific terrorist act; inciting radical anti-government sentiments in society to seize power or influence in the state; infiltrating terrorism supporters into social, state, political, economic, and force structures; establishing training centers and bases for combatants, hiding places, and arsenals of weapons and ammunition in different states and regions; creating a network of companies, banks used to cover terrorists, finance and provide multilateral support for their illegal activities; using conflict and crisis situations to expand their influence; conducting short-term armed attacks on security officials, military personnel, armament and ammunition depots; assassinating political opponents and journalists; committing terrorist acts against military personnel from foreign states' armed forces; using suicide bombers for committing terrorist acts [10].

As we can see, terrorist activity can manifest through a wide range of forms, covering all stages of criminal activity and organization. We believe this underscores the complexity of the terrorist phenomenon and the need for a deeper study of its manifestations to perceive its essence accurately and develop effective countermeasures.

Examining in detail the forms of terrorist activity manifestation, we argue that to correctly perceive its essence and characteristics, it is necessary and important to define it. Thus, in our opinion, terrorist activity represents the carrying out of actions or activities aimed directly at committing one or more terrorist offenses or contributing in any way to their commission.

Analyzing the forms of terrorist activity manifestation specified in the Law on Prevention and Combating Terrorism, we find that they largely overlap with the list of terrorist offenses provided in Art. 13411 of the Criminal Code of the Republic of Moldova. In fact, terrorist offenses represent a distinct category of offenses characterized by a set of common features that distinguish them from other categories of offenses. A correct perception of the essence of this category of offenses can provide significant theoretical support for the prevention and combating of the terrorist phenomenon. Also, to ensure the effectiveness of prevention and combating activities against terrorist manifestations, it is necessary to examine terrorist offenses based on their characteristic features.

Therefore, understanding the manifestations of the terrorist phenomenon (expressed through terrorist offenses) is of particular practical interest because terrorist activity always manifests in a certain form, which, in fact, can lead to a fair perception of the offense's nature, identifying the presence of inherent features of terrorist offenses, as well as the legislator's conception regarding the structure and criteria for attributing certain harmful acts to this category of offenses.

By Law No. 136-XVI of June 19, 2008, in force since August 8, 2008, the Criminal Code of the Republic of Moldova was supplemented with Article 13411, which contains 17 components of the offense attributed to the category of terrorist offenses. Unlike other categories of offenses, such as economic offenses, military offenses, etc., terrorist offenses are not systematized in

a single chapter of the Criminal Code. In accordance with this provision, the offenses provided for in the following articles are attributed to the category of offenses with a terrorist character: Article 1401 – Use, development, production, acquisition by other means, processing, possession, storage, or conservation, direct or indirect transfer, retention, transportation of weapons of mass destruction; Article 142 – Attack on a person benefiting from international protection; Article 275 – Hijacking or capture of a train, aircraft, maritime or river vessel; Article 278 – Terrorist act; Article 2781 – Delivery, placement, activation, or detonation of an explosive device or another lethal device; Article 2791 – Recruiting, training, or providing other support for terrorist purposes; Article 2792 – Incitement to terrorism or public justification of terrorism; Article 2793 – Traveling abroad for terrorist purposes; Article 280 – Hostage-taking; paragraph 2 of Article 284 – Establishment or leadership of a criminal organization; Article 2891 – Offenses against aviation security and airport security; Article 292, paragraph 11, and paragraph 2 – Manufacture, procurement, processing, storage, transportation, use, or neutralization of explosives or radioactive materials in part relating to the acts provided for in paragraph 11; Article 295 – Theft of radioactive materials or devices or nuclear installations, threats to steal or demands to transmit these materials, devices, or installations; Article 2951 – Possession, manufacture, or use of radioactive materials or devices or nuclear installations; Article 2952 – Attack on a nuclear installation; Article 342 – Attempt on the life of the President of the Republic of Moldova, the President of Parliament, or the Prime Minister; Article 343 – Sabotage.

It is internationally recognized that terrorist activities include not only the direct execution of a terrorist act, but also actions that support and/or promote terrorism. The Criminal Code of the Republic of Moldova does not contain a definition of the notion of "offense with a terrorist character," limiting itself to listing the offenses attributed to that category. The major positive aspect in this case is that the precise enumeration of the components of offenses perceived as having a terrorist character excludes the possibility of extensive interpretations. However, this fact does not exclude the possibility of developing a definition at the doctrinal level.

To develop a precise definition of offenses with a terrorist character, it is necessary, first and foremost, to identify the common features of the corresponding acts. In addition to this, it is necessary to analyze international normative acts in the field, which contain recommendations regarding the attribution of certain acts to the category of offenses with a terrorist character [9, p.65].

From a theoretical point of view, we consider that an offense with a terrorist character implies a criminal act that targets a distinct category of values and social relations protected by criminal law and incriminated accordingly.

We argue that the proposed definition reflects the essence and specificity of the category of offenses attributed by the legislator to the group of offenses with a terrorist character and identified by it in the respective manner. Additionally, terrorist offenses are a manifestation of terrorism through which terrorists seek to achieve their goals.

In conclusion, generalizing the above, we consider it possible to affirm that offenses with a terrorist character essentially represent a component of terrorist activity, simultaneously being a manifestation of terrorism, i.e., a mode of operation through which, in addition to harming protected values and social relations, the specific goals of the category of offenses are pursued.

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FINGERPRINTING CADAVERS: FORENSIC TOOL FOR COMBATING CRIME

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Summary

Fingerprinting is considered one of the best methods for identifying unidentified corpses, which is why it's important for fingerprinting activities to be carried out as effectively as possible, accordingly to the condition in which they are found. The technique for obtaining fingerprints from cadavers differs from the process for living individuals, primarily due to changes caused by cadaveric rigidity, dehydration, hydration, putrefaction, and mummification or charring.

Fingerprinting unidentified corpses can be a highly important forensic tool in combating crime, both for obtaining the identities of the deceased and for comparing fingerprint impressions with other fingerprint evidence collected from crime scenes in cases of other offenses, thus resolving cases with unknown perpetrators.

The AFIS (Automated Fingerprint Identification System) is used internationally and is characterized as a fundamental component of national and European judicial systems in the fight against crime, used for subsequent comparison of fingerprint impressions with existing records in police databases.

The ongoing fight of police units worldwide against all forms of crime is the primary objective of international police cooperation in its various forms.

Keywords: unidentified cadavers, fingerprinting, fingerprint impressions, AFIS, forensic identification, dactyloscopy.

Introduction. Along with the development of social relations concerning the universal right to life and the evolution of legal systems worldwide, there has arisen a requirement for the investigation of crimes against life to be carried out scientifically within a unified system provided by forensic science.

Identification of corpses is an extremely important task in solving criminal cases that involve persons whose identity is unknown. By identifying the corpse, a connection can be established with the presumed attacker, such as the nature of their relationship, whether they knew each other or not, who saw them together and if there had been any prior conflicts between the victim and the aggressor, what might have been the motive of the presumed attacker to kill the victim. The answer to these questions after the prior identification of the corpse would constitute a starting point in obtaining conclusive evidence (testimonies, statements from the accused, physical evidence). Sometimes, the unidentified cadavers belong to individuals who have also committed other offenses.

By determining the identity of a corpse, a part of the puzzle represented by the activities in

the investigation file can be completed. At times, even older cases regarding the investigation of missing persons which were in fact unidentified corpses may be solved. Within forensic science, determining the identity is regarded as a task of major importance, just as establishing non-identity ~~is~~, which involves invalidating a forensic hypotheses or scenario [1, p.109].

The methods used by forensic science and legal medicine in order to identity corpses are extremely varied. Some are simpler and do not require any special techniques, being able to be performed by any forensic specialist. Among these are the fingerprinting of corpses and establishing their identity using dactyloscopy.

The **purpose** of this article is to provide a comprehensive perspective on theoretical and practical aspects linked to corpse fingerprinting, highlighting various techniques. Through this approach, we aim to make a contribution to a deep understanding of the requirements guiding the process of corpse fingerprinting.

Methods and materials applied. For preparing the article, taking into account the specifics and the complex character of the addressed topic, the following methods of scientific research were used: the method of logical interpretation, the systematic method and the comparative method.

Results obtained and debate. Dactyloscopy (from the Greek term *daktylos* meaning "finger" and the term *skopia* meaning "examination") is a method of identifying individuals used in anthropology, legal medicine, and forensic science and it is based on the analysis of the characteristics of the papillary relief (fingerprints), following the research of the English anthropologist Francis Galton, who demonstrated that fingerprint patterns are strictly individual [2].

Digital, palmar, and plantar prints are impressions of the relief of papillary ridges present on the inner surface of the palms and the soles of the feet. The term "fingerprints" is a generic term, but in practice, it is used with two meanings:

1. Papillary traces – are involuntary imprints of the relief of papillary ridges on objects in the crime scene (including objects produced as a result of a crime or used as means of committing a crime) or on the human body (living persons or corpses) and are of interest for the purpose of identification of these persons (determining the source of origin).

2. Papillary impressions – are voluntary imprints of the relief of papillary ridges on standard dactyloscopic record sheets or in electronic format, for the purpose of recording and comparing them.

Researchers in the field of dactyloscopy, on account of their studies and practical experience, have reached the definite conclusion that it is impossible to encounter two individuals with identical papillary patterns. Each papillary pattern on each finger has a unique morphology; there are no two fingers with identical patterns, even within the same person. This uniqueness is explained by the variety of papillary patterns. They vary both in terms of their general shape and in the details of the ridges that form them. Even if two papillary patterns seem to be identical at first glance, upon close examination, it can be seen that the details of the ridge shapes no longer correspond in terms of number, shape, and placement [3, pp.41-42].

Regarding their identification capabilities, the main reason for using papillary patterns for person identification is not only the papillary pattern as a whole, but the papillary ridges and even the pores exhibit specific elements, characteristic points that tell an individual from another.

Papillary pattern properties. The imposing of papillary patterns among the most valuable and important identification elements of a person is due to the following properties:

Uniqueness of the papillary pattern. Papillary patterns differ from each other in shape and characteristic details, the number and variety of which make it practically impossible to encounter two identical prints.

Permanence of the papillary pattern is another property that consists of maintaining the shape and characteristic details of the papillary pattern from its forming, in the sixth month of intrauterine life, until the person's death. The only change, without implications for the identifica-

tion process, is the increase in size of the print, as the body develops, without any influence on the characteristics of the papillary ridges.

Inalterability is another essential property, determined by the fact that a papillary pattern cannot normally be modified or removed. Only deep wounds, affecting the dermal layer and destroying the papillae, as well as certain diseases such as leprosy, may lead to the involuntary alteration of the pattern [4, p.119].

National AFIS System – AFIS stands for *Automated Fingerprint Identification System*, which is an automated system for the identification of dactyloscopic data stored in a sole database, organized at the level of the Romanian Police. The AFIS system contains a complex technology that is used internationally, which is utilized through the exchange of dactyloscopic data, allowing for real-time verifications of papillary impressions taken from *unidentified corpses*. Within the process of international police cooperation, the National Institute of Forensic Science, through the International Police Cooperation Center, with the member countries of the PRUM Treaty, act so as to capitalize papillary impressions, thus taking action towards combating cross-border criminality.

In order to strengthen cooperation between PRUM member countries in the fight against terrorism, cross-border crime, crime prevention, and to identify victims and unidentified corpses, a decision was made that implied sharing forensic databases and so that real-time queries can be performed, including for papillary prints.

Modern forensic identification relies more than ever on biometric databases that process prints through automated identification systems such as the AFIS database. When it comes to dactyloscopic identification of corpses, in Romania, a database for the identification of persons and unknown corpses has been created.

In the case of an unidentified corpse, a C.I.N. sheet is drawn up with the assistance of the forensic doctor. The forensic expert, along with the forensic doctor, determines the apparent age, height, constitutional type, hair and eye type and color. When it comes to unidentified corpses, victims of traffic accidents, the specific crime scene investigation activities are usually carried out by the Road Police investigation team deployed at the scene. The last page of the C.I.N. sheet contains the decadactylic fingerprint form where the impressions taken from the unidentified corpse will be added, obtained through the printing/copying of the interdigital papillary relief of the corpses subject to this activity.

The responsibility for the fingerprinting technique of individuals and the optimal performance of this activity lies with the designated police officers to carry out these types of activities.

Corpse fingerprinting is performed in order to establish their identity, or to identify any papillary traces left in the records of cases with unknown perpetrators.

Both in dactyloscopy laboratories and during on-site investigations, the activity is carried out accordingly to specific procedures and work instructions, through which the method and rules for fingerprinting individuals and corpses are established. According to these procedures, fingerprinting can be done in several ways. Thus, *fingerprint ink* (black) can be used, a classic method in forensic practice. Obtaining quality impressions is necessary, and therefore hand grooming is required by washing, removing impurities, greasy substances, and those acquired during specific activities. For this procedure, fingerprint ink, a fingerprint roller, standard fingerprint record sheets, and a support to facilitate the activity will be used. Each finger is rolled on the record sheet in a single motion to avoid doubling or overlapping the papillary impressions. In addition to this activity, palm prints should also be taken, as they are different and may enhance the chances of identification.

Another method is *chemical fingerprinting*, which is easier to perform than with typographic ink. In this case, a common ink pad, impregnated with a colorless reagent, is used, onto which the finger will be rolled, and a special sheet of paper or chemically treated foil will be used, which will react with the solution from the ink pad.

Another fingerprinting method is the specific one for examining pores. In this case, a mixture of wax and greek resin is applied to a plate of glass or very high-quality glossy paper, on which each finger will be rolled individually [5, p.79].

Fingerprinting can also be performed for pore examination in a poroscopy. Poroscopic identification proves useful in the case of papillary prints that contain less than 12 ridge characteristics. In order to perform identification, there must be a full match in terms of the number, form, size and placement of the pores located on corresponding papillary ridges.

Crestoscopy is used in situations where, for various reasons, poroscopy examination is not possible. The edges of the papillary ridges have a fringed appearance due to the lateral placement of some pores, which are not fully displayed afterwards within the papillary print. To perform an identification, there must be a full match between the shapes of the selected corresponding ridge edges [6, p.78].

These types of fingerprinting techniques are specific to lifting papillary impressions from individuals, but they can also be used in the case of corpses, only if postmortem rigidity has not yet set in.

Fingerprinting of corpses for comparisons and exclusions is only carried out after deposits from under the nails (contact traces from the fingernails) have been collected to prevent the alteration of biological evidence that may come from other individuals with whom contact has been made.

Regarding the technique of taking fingerprints from a corpse, there are several differences compared to how fingerprints are taken from living individuals, as *postmortem rigidity, dehydration, water absorption, putrefaction, or mummification occur*.

Situations encountered in the practice of fingerprinting corpses.

Postmortem rigidity (rigor mortis) affects the joints and thus prevents the twisting of the fingers. In situations where postmortem rigidity makes it more difficult to take digital impressions, forced flexion and extension movements are both used at the wrist joint and at the metacarpophalangeal bones. If this is not successful, it is recommended to immerse the hands and forearms of the corpse in a vessel with warm water for 10-15 minutes. After the rigidity has been removed, the digital impressions are taken with the same material as for living individuals, so the necessary layer of ink is applied with the roller on the fingers. Before applying the ink, the fingers of the corpse must be wiped. Then rectangular cards are taken with dimensions approximately equal to the space reserved for a finger on the fingerprint record sheet and fixed in the spoon for fingerprinting corpses, which can be found in any universal forensic kit or in special kits for fingerprinting corpses. Each finger is rolled onto a card in one direction. The cards with the impressions are then glued to the corresponding spaces for each finger on the fingerprint record sheet. For this, the hand and finger names must be noted in advance on the back of each card, and when gluing on the record sheet, it is necessary to carefully check the order of each finger.

Dehydration and water absorption. Sometimes, in an initial stage, before putrefaction occurs, the subcutaneous fatty layer dehydrates. This leads to the forming a series of creases and hollows (wrinkles) on the fingertips, making it impossible to take digital impressions. In such situations, it is necessary to inject under the skin of the fingertips, using a syringe with a long and thick needle, one of the following liquids: warm water, liquid vaseline, glycerin with alcohol, paraffin oil, or a mixture of gelatin and glycerin until the wrinkles disappear. Fingerprinting must be done immediately after the introduction of the liquid into the tissues so that it can drain out through the pores or the orifice through which it was introduced. A reverse phenomenon to dehydration, but with the same consequences of skin puckering, occurs with corpses that have been in water and have not yet entered a state of putrefaction. In this situation, the skin becomes waterlogged (water absorption) and it increases its surface by dilating the cells, and acquires a series of wrinkles.

Putrefaction. This process creates very significant difficulties in the dactyloscopic fingerprinting of corpses, sometimes requiring operations that can only be performed by forensic doc-

tors. In some cases, the skin on the inner side of the corpse's fingers becomes swollen and it detaches, forming a blister. This portion can be cut and removed by incisions around the nail and the lateral parts of the phalanx. The skin obtained this way is however extremely fragile and can easily tear with the slightest traction applied. It can be reinforced and well preserved by immersion in a mixture of alcohol and glycerin. In such cases, the papillary design is best highlighted using the transparency photography technique of the epidermis. Because these skin fragments, due to their fragility, cannot be colored with black ink, the only way to highlight them is by photographing them. In order to photograph them, the fragments are gently stretched with the outer face down and pinned at the edges using needles. By lateral illumination, the grooves on the inner side appear black, corresponding to the ridges on the outer side, and this way they can be photographed. For corpses found in water that present undergoing putrefaction, the degloving technique (the skin displaced from the corpse's fingers) will be used for taking fingerprints. Taking fingerprints using the "degloving" method consists of (when the lesser degree of putrefaction allows it) the criminalist wearing the "glove" on their fingers.

Mummification. It is a destructive process that makes the skin rough, dry, and wrinkled. In such circumstances, most of the time, obtaining fingerprints by rolling (using a fingerprinting spoon) around the fingers is impossible. Among the known procedures, the most frequently used is "refreshing" the skin with a 1-3% solution of potassium hydroxide (KOH) in water. For this purpose, the fingers are kept in the solution until the skin returns to normal. Afterwards, the fingers are rolled on the fingerprinting spoon and on the corresponding card [7].

Saponification. At this stage, the skin is crumbly. It is considered inappropriate to attempt to obtain impressions using the classic method (with fingerprint ink). The molding method is more appropriate. After taking the negative mold, with the help of specific products (Mikrosil, Silmark), an attempt can be made to lift the impressions also using fingerprint ink [8, p.129].

Carbonization. Occasionally, it may be necessary to obtain recordings of the details of fingerprints of corpses that have been subjected to intense fire. Skin carbonization may occur, resulting in very fragile skin, often slightly destroyed. The correct procedure for obtaining details of papillary traces that have been subjected to drying and carbonization will be determined by the level of skin destruction. Fortunately, in some cases, the skin on the fingers and palms is somewhat protected by the tightening of the muscles, ligaments, and tendons in the hands and arms, which, as a result of intense heat, pull the fingers into a clenched fist (the pugilist position). Intense heat also tends to cause separation of the epidermal layer from the dermal layer of the skin. One method involves separating the epidermal layer from the dermal layer of the skin by cooling. To facilitate fingerprinting, a thin layer of fingerprint ink is used. The skin is then turned over and rolled onto the back, recording the details of the papillary impressions on a card. To begin this procedure, the hands are removed by a forensic doctor or pathologist and placed in separate containers labeled with appropriate markings. The containers are then refrigerated for approximately 5 to 7 days, checking each day for skin separation. When the skin separates, it is milky white and looks "like a crumpled latex glove that is too large for the wearer". The skin is then removed from the palms by carefully cutting along the outer edges with curved-tip scissors. Incisions are also made at the base of the palms, at the base of the fingers, and at the base of the thumbs [8].

Regarding the fingerprinting techniques used in the *Interpol Guide*, the following are recommended:

The first activity is to clean the hands beforehand with alcohol or water and soap and to use transparent acetate foils or adhesive foils instead of the classic sheets.

Depending on the condition of the hands, different procedures will be necessary. The fingers (if the skin surface is still attached), completely detached skin (fixed on the specialist's hand), or the dermis (after acetone swabbing) are powdered with black-colored powder using a brush (from zephyr), then the prints are taken on white adhesive foils.

Instead of the dactyloscopic record sheet, white foils, with dimensions of 32/40mm, with an adhesive side and covered by a thin, transparent plastic foil (Herma adhesive label type) are used. The transparent film is removed, and the adhesive foil is placed in the spoon for corpse fingerprinting with the adhesive side up. Then, each finger is rolled in one direction on a foil (fixed in the spoon).

In order to improve the condition of the hand, in case the skin is partially detached, the first step is to wash the hands with alcohol. The hands are then submerged for about 10 seconds (depending on their condition) in a basin of hot water.

Subsequently, a significant improvement in the appearance of the hand will be observed: the fingertips and palms will have a rounded appearance, the skin will be rehydrated, softer, and more expandable, the wrinkles caused by postmortem dehydration will disappear, and the papillary pattern will become visible again. The victim's hand is stretched by extending their fingers, then the skin is cleaned with acetone and then powdered with black-colored powder. The prints are collected after the previously described procedure [9, pp.59-60].

Police cooperation activities are conducted in the field of automated queries of dactyloscopic data and the communication of personal data and other information, exclusively within the central structures of the Romanian Police, at the request of internal and external beneficiaries.

In Romania, to establish a certain dactyloscopic identification and communicate the result through a forensic report (written communication, dactyloscopic criminal expertise), the evidence and reference prints must contain a minimum of 12 similar characteristics in terms of shape, size, and placement, without other discrepancies that cannot be scientifically explained. For this reason, the quality of the obtained prints is of great importance, implicitly the chances of identifying unknown corpses, and the methods used depend on the knowledge and ingenuity of the criminalists.

Conclusions. The methods and techniques described in this article for fingerprinting corpses for identification are suitable for a wide range of conditions and circumstances. However, an unusual situation may arise that may require patience and additional skill to achieve the most-desired results. There are also many levels of difficulty, which is why adequate training, experience, and determination are essential.

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THE PARTICULARITIES OF FORMING THE OFFENDER'S PERSONALITY*

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Summary

The personality of the offender is one of the main elements of criminology as a science, without the study of which it is impossible to clarify other criminological issues regarding the causes and conditions of criminality and the organization of the fight against it. Criminology considers the human personality from the perspective of its participation in causality and crime prevention, seeking to answer numerous questions about the offender and their criminal behavior. We propose to analyze the specificities of offender personality development and its traits. Successful crime prevention in the Republic of Moldova is possible only if attention is focused on the offender's personality, as personality carries the causes of criminality. The study uses the empirical basis of the Republic of Moldova (criminal legislation, statistical data, judicial practice, etc.)

Keywords: personality, offender, development process, traits, socio-demographic characteristics, models of criminal personality development, antisocial orientation.

Introduction. The personality of the criminal constitutes one of the central problems of all criminal sciences, and even more so of criminology.

Committing almost any crime in the Republic of Moldova is one of the extreme manifestations in most cases of human malice. Behind it is usually a certain person, a member of society, who is largely a reflection of its faults and vices [17].

Personality as a complex social phenomenon implies a multidimensional analysis of its essence. The problem of criminal personality has always had a significant scientific and practical importance, because without studying the personality of those who commit crimes it is impossible to effectively fight against crime both in the Republic of Moldova and at the international level [18].

Successful prevention of crime in the Republic of Moldova is possible only if attention is focused on the personality of the criminal, because the personality is the carrier of the causes of crime. The criminal's personality is the main and most important link in the entire mechanism of criminal behavior. Those features of it, which give rise to such behavior, should be the direct object of preventive action. Therefore, the problem of the criminal's personality is one of the most important and, at the same time, the most complex problems of criminology [9, p.151].

The data on the criminal's personality essentially completes the cognitive representation of the subjective and objective side of the crime of any crime committed, laying the foundations for an effective counteraction by the forces of the law enforcement bodies of the Republic of Moldova

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to the criminal activity in our state [15, p.110].

In the context of what has been reported, the question arises: When and why does the personality of a criminal appear?

Methods and materials applied. The complexity of the issues analyzed determined the use of information from doctrinal sources, information from criminal cases, as well as methods generally accepted by legal sciences, such as: methods of formal logic; historical method, statistical observation, mathematical and systemic methods.

Discussions and results obtained. The process of personality formation is always quite contradictory. Thus, in the case of an unfavorable moral formation of the personality, there is a discrepancy between the properties of the personality and the requirements of the surrounding reality. This applies, first of all, to such categories and properties of the personality as needs and interests, norms of morality and ideas about the law, habitual forms (stereotypes) of behavior and their self-evaluation by the subject himself. As a result, the subject does not fully adapt to the surrounding social environment, in which he has to live and work, communicate with other members of society.

Of central importance for the formation of the personality is his family, in which the basic knowledge, the initial idea about the surrounding world, the norms of behavior are acquired. At the same time, in the family there is often a whole series of circumstances that contribute to the unfavorable moral formation of the personality, both objective (the incomplete nature of the family, material difficulties, illness of the parents, etc.) and subjective (negative moral and pedagogical positions of the family members, low level of education).

Among the factors in the presence of which the formation of the negative moral-psychological features of the offender's personality occurs most intensively can be included: negative phenomena in the work collective (poor organization of production, atmosphere of poor management and irresponsibility, low discipline, drunkenness, absenteeism, staff turnover, lack of transparency and democratic management in the workforce, violations of labor legislation, etc.); omissions in school education (separation of education from growth, insufficient education, insufficient education in the workforce, insufficient education in labor legislation, etc.) [13, p.97].

The process of forming a criminal's personality is gradual. At the beginning, as a rule, in the family, in childhood, disrespect or even contempt for the interests of others, for social prohibitions, is installed in this personality, and a personality disrespectful from a legal point of view, neutral towards the criminal law, determined to live independently of the existing and generally accepted rules of behavior. The presence of mental abnormalities accelerates the development of a criminogenic personality.

The next stage in the formation of a criminogenic personality is associated with the commission of misdemeanors and clearly immoral acts that are not yet covered by criminal law. In the social orientation of such a personality, the negative component does not occupy a leading place. In the genesis of the criminal personality, this primary criminalization of the personality forms the precriminogenic personality stage.

The genesis of the criminal's personality has some particularities in cases where he presents physical or mental abnormalities.

Criminological research over the last century has shown that such deviations (abnormalities) influence human behavior, including criminal behavior, facilitating and sometimes stimulating the commission of crimes. The mental disorders that are most often studied from a criminological perspective include psychopathy, alcoholism, drug addiction, oligophrenia, central nervous system trauma, schizophrenia in persistent remission, and epilepsy [16, p.26].

It should be noted that there are other points of view in criminology regarding the genesis of the criminal personality. For example, the criminology of anthropological positivism starts from the thesis that people are born, they do not become criminals, and if they do, they are born on the basis of some pathologies with their health [19].

Currently, criminals differ from each other by demographic, legal, psychological and other characteristics, on the one hand, and on the other hand, they resemble each other for the same reasons and form stable groups [10, p.130].

The problem of the characteristics of criminals has long been addressed in criminology, especially clinical criminology. Researchers J.Pinatel, Di Tolio, Kinberg, De Greeff and others have researched and formulated, based on these particularities, the criminal personality theory, mentioning psychological features characteristic of criminals, such as: aggression, egocentrism, affective indifference, lack of inhibition and others [7, p.63-64].

Regardless of the inspiration source, most theories on the criminal personality highlight its basic feature of antisocial orientation [3, p.132].

The criminal's personality is characterized by a series of qualities, characteristics, attributes, which determine him as a person who has committed a crime.

The criminal's personality has a bio-social structure, which includes all the psychological, physical, socio-demographic and legal-penal elements.

Certain characteristics are common to a number of people (social status, character, degree of dangerousness), being classified by criminologists in the following groups: socio-demographic characteristics; legal-criminal; regarding social status and role; moral-psychological.

Thus, the human psyche is made up of the following emotional and intellectual-volitional traits: temperament, sensational dynamics, the ability to relive, character, skills, the level of mental development, the volume of knowledge, the ability to make decisions, etc.

There is a close connection between temperament and character. Temperament includes the dynamic manifestations of personality, and character – the relationship with the inner world and the environment. Temperament, at the same time, determines certain character traits, which are based on the neurophysiological qualities of the human individual, constantly enduring social control [8, p.651].

Physical elements of the person include gender, age, physical condition of the body and health, other particularities characteristic of the human physical body [6, p.46].

The age of the offender represents an individual trait of the personality that indicates the level of his bio-psycho-social development. Thus, age characterizes the degree of development of a person's physical abilities (physical strength, development of instincts, including sexual ones, etc.), the level of psychic development (intellect, will or affectivity), the level of social development (level of education, profession, marital status, life experience, etc.). All these characteristics can give us indications regarding the explanation of deviant behavior in general.

Gender represents the set of morphological and social features by which human individuals are divided into men and women. The differences between the sexes are explained by biological, psychological, social and cultural factors. From this point of view, men differ from women anatomically, physiologically, psychologically and socially, as well as through behavioral manifestations. Due to these differences, a series of theories of the difference between the sexes have appeared in criminology. It is indisputable that there are essential differences between men and women, but the origin, nature, proportions and effects of these differences, and therefore of the inequalities between the sexes, are debatable [4, p.85].

According to the data of the Ministry of Internal Affairs, in 2023, about 11.2 thousand people were registered who committed crimes, with 16.6% less compared to 2022. There were 44.8 criminals per 10 thousand inhabitants. For 10 thousand children aged 0-17 years, 13.6 juvenile delinquents returned.

The highest level of criminality was recorded among men – 90.9%, women constituting 9.1% of the number of people who committed crimes. For every 10 thousand women there were 7.7 women who committed crimes, and in the case of men this indicator was 86.1 men for every 10 thousand men.

In committing serious crimes, women were involved in a proportion of 13.7 % of all women

who committed crimes, compared to 14.2% of men. Men who committed crimes were more involved in committing crimes in the field of transport, crimes against patrimony and crimes against security and public order, and women in committing crimes against patrimony, including theft.

*For example, P.Y. was found guilty of committing a crime provided for in letter c), d) para. (2) of Art. 186 of the Criminal Code of the Republic of Moldova. In fact, P.Y., for mercantile reasons, with the aim of secretly stealing another person's goods, through free access, through the door behind the house, entered the home of GY*****, located on str.** *** *****, ***** district, where he secretly stole money in the amount of 11,600 lei from under the carpet in the corridor, after which he entered the bedroom of the above-mentioned house, from where he stole hid money in the amount of 150 lei under the mattress, thus causing it significant material damage in the total amount of 11,750 lei* [14].

Female offenders, aged 30 and over, committed a higher proportion (65.5 %) than males of the same age (60.5%), while males aged 18-24 year olds committed crimes in a higher proportion (19.3%) than women of this age (15.8%). Of the men who committed crimes, aged 30 and over, 25.9% were intoxicated at the time of committing the crime, and in the case of women of this age – 10.8% [20].

The socio-demographic characteristics of the offender's personality include social status, age, education, place of birth and domicile, citizenship and other demographic data. These particularities, at first glance, do not have a criminological character, while in the statistical reports regarding the people who have committed crimes, these indices provide important information, without which the full criminological characterization of the offender's personality would not be possible.

For example, on 01.04.2024, there were 4788 convicts on record in the penitentiary institutions of the Republic of Moldova, of which:

1. by age : 0 – up to and including 15 years old; 3 – aged from 15 to 16 inclusive; 7– aged from 16 to 17 inclusive; 10 – aged from 17 to 18 inclusive; 232 – aged 18-21 inclusive; 1268 – aged 21-30 years inclusive; 1628 – aged 30-40 inclusive; 975 – aged 40-50 inclusive; 461 – aged 50-60 inclusive; 204 – more than 60 years.

2. after education: 76 – illiterate; 259 – primary education; 2665 – secondary education cycle I, Gymnasium; 913 – secondary education cycle II, High School; 671 – secondary technical vocational education, Vocational School; 55 – incomplete higher education; 134 – higher education [21].

The legal-criminal characteristic includes data on the crimes committed, the motivation and direction of the criminal behavior, the character and the criminal status (organizer, executor, accomplice, the intensity of the criminal activity and criminal antecedents). The given characteristic presents us with the personality of the criminal from legal-criminal positions.

According to the information of the Ministry of Internal Affairs, in 2023, 24,000 crimes were registered on the territory of the Republic of Moldova, decreasing by 10.4% compared to 2022 and by 24.3% compared to 2019. The crime rate, in year 2023, constituted 96 crimes per 10 thousand inhabitants, compared to 120 crimes in 2019.

Most crimes were registered in the urban environment (61.9 %). Every third crime was registered in the municipality of Chisinau – 31.8 %. Of the total number of crimes, 5.4% of the total crimes were recorded in Balti municipality, 3.2% in Cahul, 2.9% in Orhei and 2.3% in Drochia.

Of the registered crimes, 16.0% were exceptionally serious, particularly serious and serious crimes, including 2.6% of exceptionally serious and particularly serious crimes, and 13.4% of serious crimes.

Almost every fourth crime recorded was committed in public places (26.7 %). At the same time, out of the total number of registered crimes, 81 crimes were registered with the use of firearms, explosives and grenades, including: 19 cases of hooliganism, 15 cases of intentional injury and 7 cases of murder.

In the structure of crimes, every second crime registered in 2023 was against property (41.7 %), followed by crimes in the field of transport (17.7%), crimes against public authorities (8.3%) and those against security and public order (5.5%) [20].

On 01.04.2024, out of 4,788 convicts in penitentiary institutions: 1,392 people were convicted a second time; 1,508 people convicted a third time or more; 1888 people convicted for the first time [21].

The characteristics related to the social role and social status of the criminal makes us know the membership of the social group, the interaction with other people and social groups.

Moral particularities include the intellectual level, orientation and beliefs, and *psychological ones* – intellectual, emotional and volitional particularities. These characteristics are combined with the formation models of the criminal's personality.

Regarding family influence, older criminological studies tried to demonstrate that most criminals come from so-called difficult families. The statistics of recent years have partially disproved this thesis. In reality, the increasing number of criminals, regardless of origin, forces us to question the quality of family life, its formative value on the personality of the child or adolescent. Therefore, the family must be examined from all aspects, aiming not only at the stability factors of the parental couple, but also at the life model offered to the minor, the quality of the instructive-educational climate in the family, the quality of the affective climate, the pedagogical skills of the parents, the lifestyle, of adaptation to the regime of discipline and effort, etc.

Some research carried out in our society has shown that the lack of stability of the family couple, especially the absence of one or both parents, is a factor in the increase of juvenile crime. Among the minors convicted of robbery, more than half did not have one or both parents.

In investigations from other countries, scholars have highlighted the number of minors (over 30%) who have committed violent crimes, coming from families where either the style of education is despotic or the parents are totally indifferent [2, p.105].

The climate of intrafamilial/ domestic violence leaves traces in terms of the lifestyle of the future adult [1, p.97].

Professor David Abrahamsen, from the University of Columbia, claims that the explanation of human behavior must be sought in biosexual conflicts, with which the individual encounters early, in childhood. Abrahamsen's main thesis is that family conditions are most important in generating crime. The tense situation in the family gives rise to the criminal [5, p.115-116].

However, the role of the given influence should not be exaggerated, experience proving in many cases that not all children from difficult families evolve towards criminal behavior.

The influence of school in personality formation is undeniable. Although considered the most important social tool for the integration of the young generation, as a primary factor of education, culture and civilization, the school can also induce harmful influences on the student's personality, the teacher-student relationship including valences and extremely complex and delicate sides.

Researchers in the field also reveal the alarming criminogenic action of the lack of schooling process or improper organization of the educational process in schools.

A significant role in the formation of the personality also belongs to the socio-professional environment.

Therefore, any professional failure can become a cause of the imbalance of weak individuals, while professional success depends on many factors: the degree of professional training, the correct choice of profession, specific skills, the ability to adapt to the regime of discipline and effort, etc.

An important role, perhaps the most important in the formation of the criminal personality, is played by the negative influences exerted on the minor by the microenvironment and, above all, by his surrounding group. In conclusion, the main feature of the criminal personality is the antisocial orientation, regardless of nature and direction.

Criminologists use the concept of antisocial personality orientation, which is different in terms of manifestation and degree of intensity. From these considerations, the analyzed concept has two meanings:

1) it defines the inability of the individual to adequately respond to the system of norms and

values promoted by society. The antisocially oriented individual recognizes the legal system of values, but his personality presents a maladaptation, a dysfunction, not always being able to react in accordance with these values and norms;

2) eliminates the system of norms and general values of the society, appropriating its own norms and values, which are contrary, opposite to those eliminated. Here we no longer have states of maladjustment, dysfunction, on the contrary, the criminal's personality is fully adapted, but to illegal, criminal norms and values. This type of antisocial orientation is characteristic of recidivists [5, p.273].

These meanings were developed by the etiological and dynamic theories, referring to two distinct phases of criminal behavior. The first ones refer, in particular, to what happens to a person until the moment of "taking the act", and the others refer to what happens to the criminal at the time of the act, they describe the "taking the act" itself. Seen as a whole, the examined theories, although they claim to bring essential changes regarding the fundamental problems of criminology, have not yet gone beyond the stage of surface research. Many of the exposed theses, presented as "new" or radical, only repeat ideas expressed long before.

The degree of intensity of the antisocial orientation of the criminal's personality tells us about the potential social danger he presents. For example, a recidivist presents a greater potential social danger than a maladapted individual, but who does not challenge the system of norms and values imposed by society. The latter presents a lower potential social danger, although in a favorable concrete situation he may commit a crime. The antisocial orientation of the personality can have different degrees of intensity. The criterion for evaluating the intensity of antisocial orientation can be determined by the individual's attitude towards social values, existing in a society. In most cases, the personality of the criminal, as well as the non-criminal, is formed in the same spheres of social life: family, school, circle of friends, workplace, but the character of the relationships between people, the content of their deeds, their interests differ.

The author Ciobanu Ig. believes that the favorable or unfavorable character of the influences determined in the orientation of the personality does not reside in the differences in social life, but in the content of the information itself and the ability to assimilate and interpret it. The state, society cannot provide such protective filters that would select, before their reception by the individual, the positive information, retaining the negative, amoral or criminal ones. However, the mechanism of formation of the antisocial orientation of the personality is subject to the same main coordinates, regardless of the type of society. The formation of such an orientation can only be the product of the impact of contradictory information: positive and negative, disturbing. It is certain that the antisocial orientation of the personality is not formed suddenly, all at once, but is a long-term process, during which the accumulation of received information, including the negative ones, takes place and, on this basis, antisocial conceptions and habits are formed. On the other hand, the modeling efficiency of negative, disturbing information is related to the character traits of the individual. These features influence his ability to receive such information, which can acquire a dominant character, thus determining the orientation of the personality [5, p.274].

The criminal act, in essence, constitutes the response that the antisocially oriented personality offers to a given situation.

There is a series of independent causal chains that in certain concrete circumstances of time and space can intersect and intervene in the conduct of the individual. But, the concrete life situation offers the subject several possible variants of behavior. Most of them have a licit character, others, however, have an illicit character, signifying deviations from the values protected by law.

Being examined objectively, the possibilities of achieving values in life are different, having a different degree of probability. Likewise, from a subjective point of view, their role is different, the subject usually having a priori inclinations for one or another of the behavioral options offered by the concrete life situation.

In the case of the personality with an obvious antisocial orientation, there is the possibility

that it seeks or creates the concrete life situation in the context of which the crime will be committed. For example, the recidivist pickpocket who went in search of a potential victim, finding her in the person of a woman with her purse open, will only act in one way, committing the crime. We note that, in this situation, the antisocial orientation of the personality is the generating factor and thus the cause of the crime.

The concrete life situation has the meaning of a necessary condition, or a necessary and sufficient condition, making possible the commission of the crime. The commission of the crime in the case of a personality with a particularly pronounced antisocial orientation will be much less dependent on the particularities of the concrete life situation. On the other hand, in certain concrete life situations, even a personality totally devoid of antisocial tendencies can commit a crime, but for this it is necessary that the respective situations have a limit character, imposing the illicit behavior on the subject.

In studying the personality of the criminal, the issue of the role of biological factors in criminal behavior is important. The first attempts to explain criminal behavior from biological positions were made by C. Lombrozo in the second half of the nineteenth century. Such approaches also exist in contemporary criminology.

Contrary to anthropological orientations, in criminology the visions that disconfirmed the biologicalization of criminal behavior have always prevailed. The followers of the sociological school were of the opinion that the variable social phenomenon of crime cannot be explained by the constant nature of man, especially the delinquent.

According to A. Gherţenzon [11], criminologists should not investigate the person from the point of view of the biological roots in the behavior. In the monograph "Genetics, behavior and responsibility" [12], soviet criminologists V. Kudreavţev, I. Karpetţ and geneticist N. Dubinin only mentioned the social conditioning of criminal behavior. Based on the examination of specific criminals, the authors highlighted in the foreground the social conditions of personality formation and living conditions.

In the specialized literature, several opinions are presented regarding the correlation between social and biological in criminal behavior. Academician P. Fedoseev does not rule out the need to study the individual, considering both social and biological factors. It became clear that man is a social product, a social being and his behavior is determined by social conditions. At the same time, we cannot agree with the idea that biological factors play no role in human development [2, p.108].

However, the social and the biological in the personality of the criminal do not exclude each other, but, on the contrary, complement each other. Human integrity, endowed with both social and biological qualities, is based on the dialectical interaction of the social and the biological, the same laws being characteristic for the criminal personality [1, p.100].

Conclusion. Summarizing what has been reported, we reach the following conclusions:

1. the personality of a criminal is a certain model, a social and psychological portrait with specific features;

2. the main models of criminal personality formation are: alienation (suffering from a mental illness); frustration (depriving someone of a right, damaging, misleading); maladaptation (inability to adapt); learning (training);

3. based on official statistical data, the criminal in the Republic of Moldova, from a criminological point of view, in most cases is a male natural person, responsible, of age at the time of committing the crime and in most cases previously convicted.

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DETERMINANTS OF CRIME BY OFFENDER GENDER

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Summary

General prevention measures represent the basis of any actions to prevent antisocial phenomena and crime, even though these measures are planned and implemented to address general societal issues, conditioned by its development needs. Such a character of preventive measures predetermines their significant importance for addressing crime problems in general and forms of crime by perpetrator gender in particular.

For the elaboration of crime prevention measures by gender, it is necessary to understand the causes and conditions of these types of crime. Equally, the development of a common basic principle of preventive work with men and women who have committed or are predisposed to committing a crime is necessary. Such a principle could be humanism and equality towards men and women, understanding the causes that have driven them to commit illegal or immoral acts.

Determinants of crime by perpetrator gender should also be examined in terms of age. An essential link in preventing forms of crime by perpetrator gender should be the prevention of offenses among minors. By studying the illegal behavior of minors and the specifics of the crimes they commit, the psychological characteristics of their personalities can be highlighted.

Keywords: female criminality, "gender" of crime, male offender, determinants of crime.

Introduction. The reference to gender in the context of the approach to crime involves aspects in the context of the mechanism of the criminal act, either from the perspective of the victim of the crime, or of the person who committed the criminal act. In the doctrine of criminal law, emphasis is not applied to the gender of the perpetrator, although criminology and forensics draw special attention to this sign.

In the period of 2023, in temporary detention cells from within territorial subdivisions of the Police of the Republic of Moldova were detained and placed: 3687 people. From this number – 3611 people were detained in the causes criminal (3287 – men, 272 – women; minors constitute – 52 persons), and 76 persons were detained contraventionally (75 men and 1 woman) [5].

With reference to the determinants of male criminality, it is necessary to mention that a man in relation to a woman is directly differentiated by the type of temperament and character. Thus, the difference between the psychological characters of the sexes is directly relevant in the field of crime, because this is not an impersonal phenomenon, but a form of materialization of conduct. It is definitely established that psychologically there are essential differences between men and women, differences that often materialize in the idea of gender inequality.

Instincts, needs and urges, such as: anger, greed, self-confidence, strength and physical endurance, are associated with the man. The opposite pole – jealous, caring or asthenic instincts, such as sensitivity, docility, pain and fear, govern the woman's personality. Women are more prone to depression than to anger, while men are the ones who "fire up" and become hostile. In the case of men, frustration and, above all, anger lowers inhibitions and causes a desire for action, for retribution, for revenge. Even if men and women would react similarly under the same stress-

ful conditions, men would still be more likely to commit a crime, especially a serious one.

Conflict between men is open and physical (eg.: hitting, fighting), while between women it is usually indirect (eg.: back talking). In addition, groups of men tend to take risks and defy authority. Thus, women are less inclined to engage in deviant behavior because they are not provided with role models or support for such behavior [4, p. 90].

Methods and materials applied. The complexity and diversity of the determinants of female and male criminality conditioned the use of information from public statistical data, materials accumulated from criminal cases, as well as generally accepted methods, such as: methods of formal logic (analysis, synthesis, comparison, deduction, etc.), the historical method, statistical observation, qualitative and quantitative research method.

Discussions and results obtained. The psychological and temperamental difference between men and women leads not only to the higher frequency of committing crimes by men compared to women, but also to the high frequency of committing crimes by men where the victims are women, often manifested in family, the most eloquent case would be – domestic violence.

Among the psychological causes, we also find the male criminal's aggressiveness determined by external conditions. The reason for admitting such a cause of male criminality lies in the fact that frustration often produces anger, a state of emotional preparation to attack, and men, as Ł/ we mentioned above, are prone to acts of aggression to a much greater extent than women, a fact that is due to the temperament of men.

Current male criminality is characterized by new trends, particularities and qualities, which require a special analysis. The topicality of the addressed issue resides in the fact that, at the current stage, the global crime situation suggests that 80-90% of criminal activities are committed by men. Thus, there is a significant difference between the male and female crime rate [2, p. 348].

Therefore, we reiterate in this order of ideas the importance of the psychological determinants of the male criminal, or, independent of the other factors of external or internal influence, the use of violence ultimately implies a choice.

Objective causes that would be related to material aspects, such as: poor material-financial insurance; material shortages. Poverty and wealth have their specific criminality, since the poor mainly commit crimes against property with the use of violence, and the rich - economic crimes, against good morals and personality. Poverty, at its limits, can lead some individuals to commit crimes, adding the desire for enrichment or a better life, which in turn pushes a large number of people to delinquency [8, p. 185]. The authority of the unemployed parent diminishes considerably. The reversal of family roles can produce states of confusion, inner imbalance, alcoholism, the desire for revenge against society.

Poverty can certainly be appreciated as an objective cause of crime according to the gender of the perpetrator, related to material aspects, or, in this sense, the following can be invoked: the material dominance of the woman in the home, the impossibility of the man to earn his living on the roads legal, the impossibility of employment in order to obtain a lawful, satisfactory and constant income, the disproportion between desires and the possibilities to satisfy them due to the lack of capital and the impossibility or unwillingness to accumulate it legally, etc.

Hereditary causes that belong to the elements acquired by birth. The given cause of crime by the gender of the perpetrator must be approached through the lens of the chromosome theory of crime. In the 60s and 70s, genetic orientation had a surprising achievement, based on studies carried out in prisons, on incarcerated men, discovering that a possible cause of criminal behavior could be a certain chromosomal abnormality [12, p. 134].

Developmental causes that refer to the conditions of the criminal's development to negative influences from people with whom the criminal was in contact. As the cause of male criminality, we can also invoke those of a biochemical nature that give a special role to cerebral mediators

in the genesis of aggression. The endocrinological causes assume the accentuated role of some hormones in the inclination towards crime, especially sexual, the level of testosterone, the male sex hormone, being increased in those who commit crimes of rape. Both brain mediators and hormones can generate imbalances between different brain structures, namely between the instinctual brain, the mammalian brain (emotional-affective) and the human brain (rational and anticipatory).

In order to generalize the present behavior, we can state that in relation to crime according to the gender of the perpetrator, all categories of causes of criminal behavior are incident, but with a certain difference in degree, however in my personal opinion, committing the crime or being restrained from it depends of an important psychological aspect of the person's conscience and will, of the man/woman, or depending on the strength of his/her conscience or will, he/she will be able to resist any factors determining the crime, because after all, the fact of resorting to the commission of the crime implies a choice, a determining psychological process, a point of no return.

The exodus to urban space in search of a better and easier life sometimes ends in men's lawlessness. Lack of a job, lack of adequate education, destruction of the family cell or various personal problems can push the man to commit the crime. The underworld, with its deceptive glitz, luxurious automobiles, defiance of authorities and laws, is an example. In this sense, in the Republic of Moldova during in 2023 they registered 21,442 crimes, of which 34.97% of the crimes were record in the municipality Chisinau. According to the criterion of urban/rural division a criminality, it is certified that phenomenon crime is concentrated in the urban environment, in proportion of 61%.

At the current stage, there are several objective contradictions between the material needs of the citizens and the state's ability to satisfy them. In the Republic of Moldova, the high level of unemployment, inflation, the division of society into rich and poor, the inadequacy of the living conditions of a considerable part of the population with the strict necessities of survival, and the obtaining of high incomes from criminal activities persist. The contradiction between the real (material and spiritual) needs of people and their limited possibilities by the existing system can be considered as a general cause. People without permanent jobs and other sources of income are excluded from important social spheres, mostly conditioned by the possession of certain amounts of money. Once excluded from these social relations, the individual is unable to satisfy any of his needs through legal means, a fact that often leads him to commit crimes and other violations of the law.

Another cause that influences the respective type of crime is the division of society into rich and poor, according to the principle of material stratification. In such conditions of people's frustration, the terrible differentiation of the population was reached. The rich tend that part of the income intended for social needs be spent on personal comforts (leisure industry), and the poor are interested in having these expenses allocated to meet their minimum subsistence needs. In such cases, the moral conscience of a large group of people is deformed. In the case of attacks on property, men, as a rule, justify themselves by the fact that "everyone does this" and "everyone wants to live well". In the case of thefts and scams, unwillingness to work, unorganized living and disordered sex life dominate.

One of the criminological factors is also family conflicts. The increase in the number of conflicting families is determined by the involvement of men in social production. On the one hand, it is about the emancipation wave, on the other hand, there is the need to support the family, the task that falls in most cases to men. Conflicts, as a rule, take place against the background of self-destructive behavior (alcoholism, drug use, etc.) of one or both spouses, and sometimes even of the children. Cases of misunderstanding and hostility between father and children have increased,

leading to beatings and torture, refusal to feed the children, expulsion from home or even murder.

Such negative phenomena in our society are determined by the continuous growth of conflict and aggression in society in general, the lack of spirituality and a radical material division of people. As a result, the number of men who make up the so-called "continuous" psychological type increases, being people who are permanently irritated and prone to conflict, have a negative attitude towards everyone around them, and lack respect and mercy. The closest "target" for such men are family members – wife, children, parents, in-laws, etc.

Vulnerability – constitutes points weak, lack of security or anything what can be done considerations that can be exploited by a threat [1, p. 60]. In this context, we attract caution on vulnerability wives or concubines, victims of men with accentuated hysterical reactions consider their wife (or concubine) as property. Their adultery tempts them to take revenge through criminal methods. However, most refrain from such actions by virtue of education or fear of criminal liability to which they may attract.

Among other syndromes that can lead to the commission of a crime, we can indicate the "Munchausen Syndrome" is found in both men and women, it is about people who do anything to attract everyone's attention to be at the epicenter of the events, which they can cause alone breaking the law [3, p. 241].

The next factor we can mention is the one that refers to gender stereotypes. In many societies a strong discrepancy is created between the image of women and that of men. Specifically, power, success and affirmation in public life belong to the man, and the natural place of the woman is in the family. While men appear in poses such as: work, build, repair, drive, direct, women appear in poses such as: pick flowers, take care of the household, knit. Therefore, these stereotypes presented at an early age lead to children's wrong perception of male-female relationships.

The last, but not the least, is a cause detached from the objective reality that leads to the emergence of male criminality. Or, the statistical data indicate that the highest level of criminality was recorded among men – 90.9%, women constituting 9.1% out of the people who committed crimes. For every 10 thousand women there were 7.7 women who committed crimes, and in the case of men this indicator constituted 86.1 men per 10 thousand men.

In committing serious crimes women were involved in proportion of 13.7% of the total women who committed crimes, compared to 14.2% of men. Male offenders were more involved in transport offenses, crimes against patrimony, against security and public order, while women were involved in the commission crimes against patrimony, including thefts.

The women with aged 30 and over, have committed crime in a proportion higher (65.5%) than men of the same age (60.5%), while the men in the aged 18-24 have committed crime in a proportion higher (19.3%) than the women of similar age (15.8%). Of the men with the aged 30 and over, 25.9% were intoxicated at the moment of committing the crime, and for women of this age – 10.8% [6].

The determining factor of delinquent behavior in men is the situation of maltreatment from childhood. Columbian professor David Abrahamsen still asserted that the explanation of human behavior must be sought in bio-sexual conflicts, with which man encounters early, in childhood. It is in family conditions that David Abrahamsen sees the main cause that generates crime. He wrote that he found that the emotional relationships between parents and children influence the development of character more than the economic or social situation of the family, and the tense situation in the family gives rise to criminals. Studies on adult men have shown that childhood abuse is later associated with psychological problems, such as depression, anxiety, drug abuse, etc. Long-term effects include a range of interpersonal difficulties, feelings of isolation, low self-esteem, mistrust, repeated victimization [10, p. 281].

Practice judiciary of the Republic of Moldova highlights an upward trend in enforcement

in the quality of criminal punishment fine to woman compared to men. Thus, in the 2023, fine, as a criminal penalty was established for 16.8% of women convicted, compared to 7.6% of men. Same trend of practice judiciary is also reflected in punishment of unpaid work for the benefit of the community. Thus, to every third convicted man (33.3 %), established punishment was unpaid work in the benefit the community. In women's case, this punishment was established for 35.7% from the condemned women [11].

With reference to punishment prison with execution the real or preventive arrest in the criminal causes, in year 2023, according to the data of National Penitentiaries Administration, in prisons were 5,690 people, including 325 persons (5.7%) in preventive arrest// in custody, 639 accused persons (11.2%) and 4,726 persons convicted definitely (83.1%). Out of total people are in the institutions penitentiaries, 5.3% were women and 94.7% – men. In the depending on the age of the people convicted definitively in detention, most were aged 30-39 years. So, almost every third detained man (34.7%) and every third detained woman (33.3%) was aged 30-39 years. With the situation on 01.04.2024, in the penitentiaries institutions of the Republic of Moldova were recorded 4,788 convicts, of which: 248 – women (154 convicted for the first time); 4,540 – men (1,734 convicted for the first time); 20 – minors (7 convicted for the first time) [7].

We highlight the following determinants of crime according to the offender gender: the crisis in the economic and social-political fields, unemployment, the decrease in the standard of living, the continuous bureaucratization of public administration bodies, the lack of the possibility of training citizens, especially boys, in socially useful activities, sports, culture, etc..; the negative influence of the antisocial environment; the decrease in the role and importance of the bodies empowered in social control, the value and respect towards the law enforcement bodies, the justice bodies and the system of executive-penal bodies, the increase in the level of corruption among them, the decrease in the professional level of the collaborators due to the exodus in private organizations, the overcrowding of penitentiaries (for example, on 01.04.2017 in Penitentiary No. 13 from Chisinau, there were 1,220 persons on record, bearing in mind that the maximum number of convicts admitted for detention in the given penitentiary is 1,000 persons [4, p. 90]), the lack of effective correction and re-education programs applied in penitentiaries, the persistence and propagation of the criminal subculture in society, especially among boys, the continuous diminishing of the role of true social values; gaps in the cultural-educational activity, the lack of a well-organized rest system; gaps in family, institutional education; lack of punishment for previously committed crimes or violations; the application and erroneous determination of the punishment; unjustified release from liability or criminal punishment; the low possibilities of correction and re-education of the existing punishment measures; the possibility of increased criminalization and consolidation of the antisocial visions of convicts in penitentiaries, due to the specifics of these places; the inefficiency of the post-conviction resocialization mechanisms of persons, conditioned by the lack of some organs and the less effective functioning of the existing ones in this regard; the lack of programs approved at the state level in this field, the low control over the fate of people released from prisons; the continuous increase in the number of alcoholics, drug addicts, drug addicts among the country's population; shortcomings in the management system (improper safeguarding of assets, deficiencies in records and control, insufficient technical-material insurance, etc.).

Conclusion. An important role in the process of crime prevention is to be attributed to its analysis according to the gender of the perpetrator. Either the measures of individual social control are specific to the gender of the perpetrator.

We find that in the Republic of Moldova, in recent years, we can observe an increasing trend in the number of crimes committed by men. This last fact is one of concern, or, in the same context, there is an increase in the number of victims – women.

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SCAMMING TRENDS IN THE REPUBLIC OF MOLDOVA

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Summary

Swindling is one of the most widespread and controversial property crimes committed in the Republic of Moldova. Being characterised by its own mechanism of perpetration, which distinguishes it from the other forms of theft criminalised by criminal law, the phenomenon of swindling is characterised, on the one hand, by a specific causality and, on the other hand, by particular preventive measures resulting largely from the nature of the criminogenic factors that determine it. In order to substantiate an effective preventive model, the authors examine the current trends in the spread of scam crimes across the Republic of Moldova in the reference period 2019-2023. The aim of the paper is to increase the efficiency of the statistical analysis of crime based on the use of up-to-date information obtained through tools and methods related to crime statistics. The results obtained can be used both in the teaching-learning process of students and in the preventive work carried out by the representatives of the competent bodies.

Keywords: criminality, murder, crime clues, fraud, dynamics, etc.

Introduction. Crime, like any other social phenomenon, can be assessed using qualitative and quantitative criteria, the main ones being level, structure and dynamics. These characteristics of the crime are determined by statistical indicators of a set of criminal acts committed over a certain period of time in a given territory.

The crime of swindling, as a historically variable phenomenon, is in a continuous metamorphosis, characterized by a very high flexibility and adaptability and the ability to use new methods in the practice of illicit criminal activity. As a result of economic, social and political changes, the development of the legal sciences and other changes in society, fraud inevitably changes both in terms of quantity and quality.

The quantitative and qualitative transformation of crime significantly complicates the work of law enforcement. This is due to the fact that scams are characterised by a variety of types, adaptability and the ability to modernise according to the areas of application as well as specific victimological peculiarities.

According to Article 190 of the Criminal Code of the Republic of Moldova, *swindling is the theft of another person's property through breach of trust, inducement or misleading.* The need for a criminological characterization of swindling is due to the spread of this crime in all spheres of public life. Determining the causes, circumstances, patterns and personality traits of the offender – are of paramount importance not only for the detection of crimes and identification of the

offender in narrow terms, but also for the development of appropriate and effective methods and tools to prevent and combat the crime of fraud.

Discussions and results obtained. In any field of scientific research, including criminology, problems of varying complexity arise and require specific methods and approaches to solve them. This is also due to the fact that the volume of scientific knowledge is growing rapidly, making it necessary to improve and create new, efficient ways of assimilating and applying acquired knowledge in practice. The main task in the current stage of criminological crime research requires the existence of practical and theoretical methods, which would allow the creation of a solid scientific basis based on data reflecting the criminal reality in all its fullness and complexity.

It is undeniable that a cognitive process cannot take place without systemic analysis and synthesis, which form the logical foundation necessary for the legitimacy of the connection between the object under investigation and its relations and qualities. Analysis is a general scientific method whereby the subject under study is effectively or abstractly divided into its component parts, and these are then studied separately as parts of a whole. Moreover, in addition to the generally accepted concept of analysis it is frequently used as a synonym for scientific research. When criminology studies issues related to fraud crimes, various methods of collecting and processing information are used, including the statistical method to determine the volume, rate and dynamics of crime.

Legal statistics is a system of concepts and methods of the general theory of statistics applied to the study of crime and measures of social control over crime. Legal statistics is one of the branches of statistical science, which with its indicators reflects the quantitative side of various social phenomena [12].

The relationship between criminology and statistics is central to criminological analysis. Statistics is a science which, using probability calculus, studies general phenomena and processes quantitatively in order to describe them and discover the laws governing their manifestation. In relation to criminology, quantitative indicators of general crime are elucidated in different areas, including scams, which provide information on the causes and conditions conducive to the development of crime, the causes of the perpetration of scams, which allows to reveal the relationship between individual processes and social phenomena.

The role of legal statistics in improving the work of these bodies is very important, as statistical data help to determine how efficiently legal institutions operate and how justice is dispensed.

When assessing the level of crime, it is necessary to take into account the possible extent of latent crime, i.e. crimes that are not reflected in official statistical reports. Latent crime is divided into two types: hidden crime and crime that is hidden. The first was not detected by law enforcement because of the specifics of the crimes and the victims' attitudes towards them or because of other circumstances. The second is not reflected in statistical reports as a result of the illegal actions of the crooks, their victims, but as a result of the unscrupulous actions of the collaborators of law enforcement bodies [14].

The factors that determine the latency of the crime are:

– The victim's reticence;
– The insignificance of the damage caused by the crime;
– Uncertainty about the effectiveness of criminal justice;
– Special relationships between victim, witnesses and offender;
– Fear of threats from the offender;
– Defects of legal awareness;
– The relationship between victim and offender, etc.

Police statistics reflect the crime situation on the whole territory of the Republic of Moldova and are produced by the structures subordinated to the Ministry of Internal Affairs. The authorities responsible for statistics include, at central level:

– General Inspectorate of Police (GIP) in accordance with the Regulation on the organization and functioning of the General Inspectorate of Police, approved by Government Decision No. 547/2019;

– Operational Management Inspectorate (OMI) in accordance with Government Decision No. 120/2019 on the organisation and functioning of the Operational Management Inspectorate of the Ministry of Internal Affairs;

– Information Technology Service (ITS) in accordance with Government Decision No. 317/2020;

– General Inspectorate of Border Police (GIBP) according to Government Decision No. 1145/2018;

– At the local level, statistics are collected by local police inspectorates under Article 19 of the Law on Police Activity and the Status of the Police Officer No 320/2012 and subordinate structures of the border police [9].

Results. The level of scams is reflected by the absolute number of crimes committed in a given territory in a given period. This indicator refers only to the quantitative calculation of scams, but not to the qualitative one, leaving out a set of specific characteristics.

The dynamics of the scams reflect the changes in crime incurred over equal time periods. In calculating this indicator in absolute values, the moving basis method is used where the number of scams for the current period is compared with the previous period, identifying the numerical deviations of the crime. The fixed base method is used to calculate the relative dynamics of the scams, according to which each period analysed is related to a reference period, calculating the quantitative deviations of the periods analysed in relation to a basic (fixed) indicator.

The rate of scams is the ratio of this crime to the total crime committed in a given period of time, which makes it possible to calculate the percentage share of scams and to analyse fluctuations in the structure of crime.

The fraud ratio is considered to be one of the most objective indicators and is calculated as the number of crimes per 100,000, 10,000 or 1,000 inhabitants.

Official crime statistics keep track of crime rates based on the following indicators:

– The number of victim statements and complaints about crimes;

– The number of recorded offences;

– Number of identified persons who have committed crimes;

– The number of persons convicted of offences according to sentences that have entered into force.

Information on the results of the fight against crime by the prosecution and prosecution authorities of the Republic of Moldova has been collected and publicized since 2011, providing generalized data on different time periods, categories of crimes and their structure [9].

Legal statistics (criminal, civil and administrative) take account of their objects not in isolation, but in connection with the evaluation of the activities of law enforcement bodies, prosecutors and courts. Correct organisation of primary records is the main prerequisite for statistical reporting on crimes, activities of internal affairs bodies, prosecutors and courts. Primary records are also used for operational purposes, for example to provide information on court cases [12].

Statistical reporting of scams is generated on the basis of primary records, diary entries, protocols, statistical reports of subordinate departments and other documented sources. Unified crime recording is the primary recording and registration of identified offences and the persons who committed them.

The statistical record of offences is carried out on a monthly basis, which allows the analysis and synthesis of relevant and updated information and the necessary measures to prevent and combat illegal actions.

Indicator	2019	2020	2021	2022	2023
Total crimes	31657	26342	24338	26833	25333
Total property crime	14426	11157	11203	10942	9448
Total scams	2114	1947	1818	1930	2795

Table 1. Indicators of scams in the period 2019-2023

Table No. 1 shows the absolute indicators of scams committed in the Republic of Moldova during 2019-2023 by different dimensions [1].

	2019/2020	2020/2021	2021/2022	2022/2023
Total crimes	-5315	-2004	+2495	-1500
Total property crime	-3269	+46	-261	-1494
Total scams	-167	-129	+112	+865

Table 2. Absolute dynamics of scams in 2019-2023

According to the data in Table No. 2 [1], during 2020 and 2021 the total number of crimes committed on the territory of the Republic of Moldova decreases by 5315 (20%) crimes in 2020 year, and by 2004 crimes (8%) in 2021. In the following year the number of crimes committed increases by 2495 (10%) cases compared to the previous year, with a subsequent decrease of 1500 (9%) cases in the year 2023. A downward trend is also observed in the case of property crime, which includes the crime of fraud.

But the dynamics of scams are not uniform with substantial negative and positive deviations. Thus, if in 2020 and 2021 the number of scams decreases by 167 and 129 cases respectively, in 2022 there is an increase of 112 crimes and a significant increase of 865 in 2023 compared to the previous year.

Thus, the *rate of scams* in 2019 is 6%, in 2020 – 7%, in 2021 – 7%, in 2022 – 7% and in 2023 – 11% of all recorded crimes, being a relatively constant indicator with a sharp increase of 4% in 2023 of this type of illegal actions. Analysing the rate of frauds as a percentage of total property crime, it is 15% in 2019, 17% – 2020, 16% – 2021, 17% in 2022 with a significant increase to 29% in 2023.

Note: Reference year 2019

Indicator	2020	2021	2022	2023
Total crimes	-5315	-7319	-4821	-6324
Total property crime	-3269	-3223	-3484	-4978
Total scams	-167	-296	-184	681

Table 3. Relative indicators of the dynamics of scams in the period 2019-2023

The data reflected in Table 2 on the indicators of the absolute dynamics of scams for the period 2019-2023 are confirmed by the data of Table 3 [1], which reflects the relative dynamics of indicators in conjunction with the year 2019. Thus, although there are fluctuations in the indicators analysed depending on the period evaluated, the situation regarding the spread of scams is considerably better than in the reference year in which the highest volume of offences was recorded, but not for scams, the number of which exceeded the reference indicators by 681 cases.

During the years 2020 and 2021, we see an improvement in the *overall* crime situation and

in the case of fraud, but in the following year there is an increase, i.e. a worsening of criminal activity in the Republic of Moldova. Taking into account that crime is a direct reflection of the social life of the population, we can conclude that the standard of living in the period 2019-2022 was relatively decent, while the significant drop in indicators in 2023 indicates the worsening of the standard of living, which led to the commission of more crimes.

Indicator	2019		2020		2021		2022		2023	
	women	men	women	men	women	men	women	men	women	men
Total	55	429	49	321	57	257	68	346	55	293
Minors	-	16	1	21	3	7	18	25	2	18
18-24 years old	17	110	12	60	15	54	17	83	15	90
25-29 years old	12	120	7	71	7	69	5	43	5	52
>30 years old	26	182	29	167	32	127	43	195	35	132
With a background	3	19	1	5	1	12	1	4	9	3
You hire	23	166	22	114	26	88	14	114	23	107
Employees	-	6	1	5	-	2	4	4	1	2
In group	4	12	2	25	4	14	4	24	1	32

Table 4. Absolute indicators of scams by depending on the personality of the offender for the period 2019-2023

The data reflected in Table 4 [2; 3; 4], show that the majority of the perpetrators of fraud offences are men over 30 years of age, not employed, with no criminal record and acting on their own. In the case of minors who have committed fraud, the share of boys is also dominant, with a divergence of about 45% in 2021 and 30% in 2022.

Region	2019	2020	2021	2022	2023
Chisinau	1085	908	1140	927	1324
North	417	409	404	403	417
Center	230	222	252	319	358
South	112	124	133	121	170
ATU Gagauzia	142	93	128	106	158
Bender	53	11	13	11	27

Table 5. Indicators of scams depending on geographical positioning in the period 2019-2023, [5]

Chisinau municipality, being the locality with the largest number of population, has the highest number of scams in the Republic of Moldova. According to statistical data presented by the Ministry of Interior of the Republic of Moldova, in Chisinau there are fluctuations of increase in the number of robberies in 2020 compared to 2019 with 177 cases and 213 cases in 2022 compared to 2021. This is followed by an increase of 397 cases in 2023, which in relative terms, is an increase of 239 cases compared to the beginning of the period analysed.

Relatively constant is the situation in the north of the Republic and ATU Gagauzia where

there are insignificant fluctuations, as well as in the south where only in 2023 there is an increase in cases by 50% compared to the indicator in 2019. In central Republic of Moldova the number of crimes will increase by about 60% in 2023 compared to 2019. At the same time, in the city of Bender, after a decrease in the number of cases of fraud by about 4 times with keeping the indicator constant in the period 2020-2022, in 2023 there is an increase of 2.5 times.

The calculation of the coefficient of frauds reported per 1000 inhabitants for the year 2019 (total population 2,684,772) is equal to 0.78%, year 2020 (total population 2,643,675) – 0.73%, year 2021 (total population 2,626,588) – 0.69%, year 2022 (total population 2,565,030) – 0.75% and year 2023 (total population 2,512,758) – 1.1% (according to data from the National Bureau of Statistics). Thus, during the years 2019-2021, there is a decrease in the coefficient of fraud by 0.09%, which denotes an improvement in the crime situation, while in 2020 the coefficient increases by 0.35%, highlighting the existence of determinants that led to increased crime in the Republic of Moldova in a short period.

Criminal law provides for special forms of the offence of fraud, such as that set out in Article 260^6 of the Criminal Code, namely computer fraud. These actions need to be examined cumulatively with fraud offences, as they have a similar composition, with different tools being used for illegal purposes, namely IT technologies.

Indicators	2019	2020	2021	2022	2023
Cyber crime	142	119	113	125	76
Information fraud	16	12	11	5	8

Table 6. Indicators of information fraud in the period 2019-2023

From the data presented in Table 6 [6], it can be seen that the lowest rate of cyber fraud out of all cybercrimes is between the 4% index in 2022 and 11% in 2019. In terms of the dynamics of the indicators analysed, the total number of cybercrimes almost doubled, while cybercrime after a steady decrease in 2023 increased by 60%.

Conclusions. As a result of the analysis of the statistical data on crimes, the following conclusions can be drawn:

– In the period 2019-2021 the total number of crimes committed on the territory of the Republic of Moldova, including the number of scams, in absolute and relative indicators decreased proportionally;

– Between 2022 and 2023 there was an increase in the total number of crimes and scams;

– The rate of scams in the period 2019-2022 is relatively constant of 6-7%, with an increase to 11% in 2023;

– The coefficient of scams per 1000 inhabitants is relatively stable for the period 2019-2022 with an increase of 0.35% in 2023;

– The largest number of scams are committed in Chisinau municipality, followed by the North region, and the smallest in ATU Gagauzia;

– The people who commit scams are predominantly men over the age of 30 without a stable occupation.

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THE EVOLUTION OF ROMANIAN MILITARY INTELLIGENCE, FROM ITS ESTABLISHMENT TO THE FIRST INTERWAR YEARS

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Summary

After the Union of the Romanian Principalities (January 24, 1859), there was a need to establish an intelligence structure of the country. It was constituted within the Romanian Army on November 12/24, 1859. It is about the Second Section of the General Staff of the Army, with the mission of procuring military information. Then with the evolution of army structures, intelligence bodies were reorganized in accordance with the needs of the time. With Romania's entry into World War I (1916), several allied Russian armies were present on the Romanian front, so it was necessary to establish the Romanian-Russian counterintelligence service. Only after World War I, in 1924, was established the Secret Intelligence Service of the Romanian Army, as a distinct intelligence and counterintelligence structure of the Romanian Army.

Keywords: Romania, Bessarabia, intelligence services, Romanian Army, World War I, espionage, counterintelligence.

Introduction. The history of intelligence services has always attracted the attention of specialists and those curious about the historical past, because their organization, working methods and, perhaps most importantly, the results of their work, were always interesting. In Romania, as in other countries of the world, modern intelligence services were established within the army, and in the course of time, the interests of the state also extended to civil domains.

Methods and materials applied. Within the preparation of the article, we applied the principle of objectivity, the events being presented and analyzed without premeditated bias. Published scientific works and memoirs were used, and the original part encompasses the documents from the Romanian Military Archives in Pitesti.

Discussions and results obtained. After the achievement of the Union of the Principalities (January 24, 1859) and the start of the process of creating of modern Romania, the ruler, Alexandru Ioan Cuza (1859-1866) had among his objectives the creation of an intelligence structure that would correspond to the needs of the time. On November 12/24, 1859, by the High Order of the Day No. 83 the General Staff of the Army was established, in the structure of which, Section II was the first intelligence service of the Romanian Army and of Romania [9, p.16]. Its main mission was to centralize information on strategic operations, to inform itself on the terrain and other aspects related to a possible tactical operation in certain areas [13, p.35].

Within the period 1866-1877, the Romanian Army took over the Prussian model of organization and training (following Prussia's victory over France in the war of 1870-1871). On March 17, 1867, by Decree No. 380, the General War Depository was established, made up of the Romanian Map Division (military topography works) and Historical Works Division (military statistics and regimental papers). Until the proclamation of state independence (1877), the collection of information was carried out by the Post, Telegraph, Telephone Department of the Ministry of the

Interior, the Operations and Topography Divisions of the General Staff of the Army, by praetors of the Military Gendarmerie and diplomatic agencies [9, p.16-17]. The Higher War School was established in 1889, where an information course was also taught [13, p.35].

Over the time, following the reorganization of the Ministry of War and/or the General Staff (Great Staff of the Romanian Army), the structure responsible for the information action had different names and organizations[1].

In 1904, the Second Division received the following information: news regarding the enemy, news on the ground, news of the country's wealth and resources, news on the inhabitants. This information was collected by the troops, through research, reconnaissance, from historical sources, maps and military statistics, through secret envoys (spies), through the interception of private and official correspondence of letters, through the research of military prisoners and residents, news from newspapers, etc. [13, p.35-36].

Simultaneously with the informative actions, counterespionage activities were carried out. The instructions from 1911 drew attention to the fact that foreign agents on the territory of Romania are interested in the military forces during peacetime and wartime, in the existing armaments in the units and in warehouses, in the quantities of powder produced or imported, in maps of the military objectives, troop movements, etc. [13, p.36].

Since 1911, the permanent agents of the Intelligence Service (II Division) had a general plan, called the "program", for the search for military information. According to it, "military news" was supposed to contain information about: organization of the central military commands and services, mobilized military forces (being "on a war footing"), weapons and military equipment in peacetime and wartime, dislocations, fortification points, military regulations, military budgets, military instruction, carrying capacity of railways, roads and highways (if they were practicable or not), telephone and telegraphic communications, etc. Furthermore, one of the main missions of permanent agents was the discovery of foreign spies: "The research agent is also obliged to

[1] Since 1882 – II Division of Information, Communications and Transport [9, p.23-24]; from 1891 – II Division of Military Statistics, Study of Foreign Armies, Intelligence and Transport, with two offices – First Office - Military Statistics and the Study of Foreign Armies, International Affairs, Library; and Second Office - Organization and Service of Stages and Railways; Troop Transport by Rail and Water, Military Post and Telegraph Service, Signals [9, p.24]. From 1897 – II Division of Military Statistics, Study of Foreign Armies, Intelligence, Transport, Telegraphy, Missions and International Affairs, with First Office - Military Information and Documents (including military attachés) and Second Office - Organization and Direction of the Rear Stages of the Army [9, p.24]. From 1904 – II Division of Study of Foreign Militaries, Intelligence, International Affairs and Missions, with Forth Office - Communications and Transport, Firth Office - Foreign Armies and Intelligence, Sixth Office - Historical and Statistical Studies [9, p.25]. From 1907 – II Division of Study of Foreign Militaries, Intelligence, International Affairs and Missions, with Forth Office - Army operations, Fifth Office - Transports and Stages, Sixth Office - Intelligence and Foreign Armies [9, p.25]. From 1913 – II Division with Offices C – Information, and D – Topography and Transports [9, p.26]. From 1914 – III Division - Intelligence, Study of Foreign Armies, Operations and Navies, with Firth Office - Intelligence and Study of Foreign Armies, Sixth Office - Operations and Seventh Office - Navy (II Division remained with Third Office - Military Instruction and Forth Office - Regulations) [9, p.26]. From 1916 – III Division with Fifth Office - Information, Sixth Office - Operations, Seventh Office – Navy and Eighth Office - Subsistence [9, p.75-76]. After the mobilization of the Romanian Army, on August 14/27, 1916, the Great General Staff consisted of two parts – Grand Headquarters (operative part), with Second Office - Information within I Division Operations and the Great General Staff (sedentary part), with Fifth Office - Information and News Surveillance [9, p.78]. On June 12, 1918, the information structure of the Great General Staff became the IV Division - Information [9, p.110]. Following the reorganization of the Ministry of War, on April 18, 1919, the Great General Staff was made up of two divisions, made up of eight units. Within the II Division was the 5th Intelligence and Counterintelligence Unit, with two Offices – First Office - Information (with Sub-office 1 the study of the Balkan armies – South, Sub-office 2 the study of the armies of the West, Sub-office 3 the study of the armies of the East, Germany and Austria, Sub-office 4 studies – Elaboration of Papers, Studies, Bulletins of Intelligence and Counterintelligence, etc.) and Second Office - Counterintelligence (Sub-office 1 data collection from abroad through agents, Sub-office 2 counterintelligence, counterespionage, propaganda and censorship service). The Cipher Office was added in March 1920 [9, p.134-135]. After the definitive transition of the army to the state of peace, in 1921, the Vth Division was organized into four offices: First Office - Intelligence, Second Office - Counterintelligence, Third Office - Propaganda and Forth Office - Cipher [9, p.136-137].

discover the secret research organization of foreign states in the country in which he is installed and to indicate the people who are in charge of this service and the communication method they use" [1, p.4-10].

Also in 1911, the Intelligence Bureau of the General Staff proposed a budget project for the organization of an intelligence service [1, p.11-12]. The service was to be staffed with "permanent agents" (placed in various localities, which could be covered by possible military actions and behind the possible battle front), "various special and casual informants" and "liaison agents". Permanent agents were to be sent or recruited to the Russian Empire (one each at Reni or Ismail, paid 100 rubles per month, Chisinau – with 120 rubles, Unghenii Rusi – with 50 rubles and Odessa – with 150 rubles), Bulgaria (one each in Silistra, in Varna or Sumla, remunerated with 200 lei per month, in Rusciuk – 200 lei, Plevna – 200 lei, Sofia – 400 lei and four agents of the ships of the Romanian fleet in Bulgarian ports – with 240 lei) and Serbia (an agent in Belgrade, paid 250 lei per month). It was proposed to employ five liaison agents, each paid 200 lei per month. They were to obtain the task of establishing and maintaining liaison between the permanent agents and the Intelligence Division of the General Staff. They could also be used to verify information, but also for counter-espionage action.

Since it was not known what the number of special and occasional informants would be, an amount of 15,320 lei was proposed for them, from which the documents needed to complete the data on foreign armies and possible military actions would also be procured.

For the transport expenses of the 15 agents (except the four agents from the Bulgarian ports), the amount of 100 lei per month for each and the allowances was provided, in total of 18,800 lei per year.

The budget of the proposed project was 80,000 lei per year, of which: 33,880 lei for permanent agents (5,040 rubles or 13,600 lei for Russia, 17,280 lei for Bulgaria and 3,000 lei for Serbia), 12,000 lei for liaison agents, 18,800 lei for transport, 15,320 lei for special and occasional agents, and for the procurement of documents.

At the end of the text of this project the author was drawing attention: "With the above amount, only a small beginning can be made to the Intelligence Service. For the start of its operation, it will be better to see the shortcomings and the part where a greater or more worthwhile development of the service must be given" [1, p.12].

The proposed budget was not an exaggerated one, considering that, in 1911, the average salary of a worker in Bucharest at the Romanian Railways was 100 lei per month, in the oil industry most workers had 2-3 lei per day, the minimum wage in agriculture was up to 2 lei per day, a kilogram of white bread then cost 29-30 bani, a kilogram of pork – 1 leu 21 bani, a liter of milk – 33 bani, a kilogram of potatoes – 14 bani. Finally, we mention that the budget of the Ministry of War, foreseen for the year 1912-1913, was 74,428,036 lei [2, p.162, 267, 298-299, 301, 392, 413].

For the moment, we do not have a documentary proof that this project was approved and implemented. However, we know that, in 1914, the III Intelligence Division of the Great General Staff issued the Instructions for the operation of the Mobilization Information Office [1, p.52-60], in which, in detail, the aspects related to the search, centralization, classification and exploitation of information were explained. At the beginning it was emphasized that information is "one of the essential elements with which the Command prepares its combinations and guides the strategic maneuver in view of the battle". Therefore, the Intelligence Office "must develop maximum activity for their gathering (information), as well as a lot of circumspection in the deductions that will be drawn from their examination".

The outreach activity was to include three stages, namely: information search, centralization, classification and verification, as well as exploitation and use of information. These three stages represented three distinct activities of the Intelligence Bureau, "entrusted for execution

to certain officers". The informative activity had to start from the knowledge of the army/armies with which the Romanian Army was going to fight and the events in the theaters of operations. In this sense, the Intelligence Bureau of the Great Headquarters had to request from the similar office of the General Staff all the necessary works at its disposal, regarding the structure and organization of the army/armies with which the Romanian Army was going to face, the regulations regarding the marches, the stationing and battle tactics, geographical and statistical data of the regions where the battles were to be fought, etc.

The search for information was to be carried out both by land and by air, "using multiple bodies, stimulating and utilizing at the same time, all the energies and initiatives". Within the informative action, "from the first days of mobilization", there were to be used: covered teams, which were going to send the information procured directly to the Great Headquarters and area commanders; air squadrons; cavalry divisions; territorial military and civil authorities near the border/front; officers sent on mission; secret agents.

It should be emphasized that those covered teams will be permanent and, in the future, will constitute information centers of the Great General Staff, located at the borders of Romania.

During the military operations, the necessary information was to be obtained from large units in contact with the enemy, from prisoners, from official and private correspondence captured in enemy territory.

At the needful moment (when hostilities will break out), following the orders and operational directives, the Chief of the Intelligence Bureau was to draw up special instructions for the military and civil authorities near the area of operations, for the officers who were to be sent on the mission, as well as for secret agents. Orders for the cavalry division and large units regarding the procurement of information were contained in the operations orders, so they were to be drafted by the Bureau of Operations.

The main mission of the Intelligence Bureau was "to constantly multiply the means and sources of information and guide the activity of the information bodies, in the views and intentions of the Command".

Each evening the Chief of the Intelligence Bureau had to determine, depending on the information he was to procure, the land and air assets he needed and which were to be made available to him. Strictly speaking, he had to establish and request everything necessary (technical and human) to be able to send acknowledgments. Throughout the use of those means, they were under the authority of the head of the Intelligence Bureau.

All the information obtained and received by the Intelligence Bureau should be introduced in a register, called "information notebook". In the "notebook" the date and time of arrival of the information had to be noted; the registration number it was given; source; date and locality where the information was obtained; information summary; information use (to which authority it was notified and when; in which "information bulletin was ~~it~~ included"); documents attached to the information; information value. Depending on the value, each piece of information reported had to have a callout, as follows: secure information was noted with "0", "01" – pertinent information and "02" – doubtful information. Unimportant information should not be introduced into the "notebook", and unreliable information should be checked. Secure information, along with unreliable information, after centralization and chronological ordering had to be compared and contrasted with each other. This operation was to be thorough and of great responsibility, because based on the results obtained "the Command will take decisions of the greatest importance". Therefore, "method, silence and a lot of penetration" are recommended. From this comparative study, "a series of certainties and probabilities were to be established".

In order to use certain and probable information, it was to be entered daily into "information graphic". A graphic had to be developed for each large unit (with the time, date and location

of the respective unit), who was part of an army or army group, which was on the other side of the front, ahead of the Romanian troops. For each division and service, which was part of the enemy's armed forces, a chart also had to be made. By reason of these charts, certain information was compared with probable information and one could follow the situation of the enemy device, the movement of troops, etc. Based on the data from the graphs, the general situation on a certain front sector had to be presented on tracing paper. The map should be accompanied by an explanatory note of the situation on the respective segment of the front. Depending on the need, the Intelligence Bureau had to prepare 2-3 such situations about the general state of the front (in the morning and in the evening, and possibly in the middle of the day). Namely, these situations "will serve to make decisions" by the Great Headquarters.

The daily general situation at the front had to be known not only by the Great Headquarters, but also by the headquarters of armies, corps and divisions. For this, the Intelligence Bureau had the obligation to draw up a daily or periodic "information bulletin", addressed to all the commands on the front, which would guide the commands on the execution of the ordered operations. In the "information bulletins" it was necessary to present "all that is known about the enemy, regarding the position, distribution, and nature of its forces, bringing out the certain, the probable, and the doubtful parts, as well as the possibilities of encountering of the various corps of the enemy army". The "bulletin" should not include "too small details", which could harm the image of the overall situation. The information presented had to specify whether it was reliable and verified or whether it was deduction, based on a series of facts. Regardless of the form and style of the "information bulletin", it was important that "the Officer, who will read this bulletin, should not take as reality what is only suppositions, or be led to consider as a positive fact, an indication that needs to be confirmed or verified". All the bulletins had to be bound in files, for periods of the campaigns, which would later be used to write the history of the war.

The procurement of information by air was to be done by reconnaissance executed by observation officers, with the help of airplane squadrons. Such operations were to take place daily, and the information obtained was to be communicated to the Intelligence Bureau. It should be emphasized that the observation officers, when not performing reconnaissance, had to work within the Intelligence Bureau.

At the end of each day, the Head of the Intelligence Bureau established the aerial reconnaissance plan for the following day. The plan was to be based on "the situation and the supposed intentions of the enemy and the object pursued by us", and was to contain the number and directions of reconnaissance, the distance at which the planes would be sent. Recognitions were not to be duplicated, but staggered (the document emphasized that experience had shown that sending two airplanes simultaneously on the same itinerary was not reasonable; two or more planes had to be sent in staggered fashion to ensure continuity in the observation action).

Aerial reconnaissance missions had to be carried out on the basis of a written order, indicating the time of departure, the sector or reconnaissance route, the purpose of the mission, the name of the observing officer, the airplane or aircraft that will go on the mission, as well as the technical details of execution of the mission.

Before starting the mission, the Chief of the Intelligence Bureau had to direct the observation officer on the general situation of the enemy, allied troops, the latest information obtained, etc. As a flight itinerary, it was necessary to indicate "a circuit marked on the likely marching directions of the enemy columns". The observation officers had to be told all the assumptions about the advance of the enemy columns, their passage through certain points, at certain times, etc., which they had to check during the mission, in order to establish the real situation.

The Head of the Aviation Service had the obligation to identify a landing field in the immediate vicinity of the Great Headquarters, on which to land the planes coming from the mission. The

identification of a new landing ground was to take place whenever the Great Headquarters move elsewhere.

On aerial reconnaissance days an officer from the Intelligence Bureau had to be on the landing field. He had to be in a shelter – a tent or an improvised barrack – where he would have maps, the up-to-date general situation of the front on tracing paper, a telephone, a car, a motorcycle, etc. He had to be aware of the general situation on the front and the intentions of the Romanian command. From the observation officers returned from the mission, he had to receive all operational information, which he would introduce into an "information notebook", compare, verify, classify and then, urgently communicate to the Great Headquarters, through the Intelligence Bureau. In emergency cases, when important information was uncertain, the officer could order a new aerial reconnaissance to verify it.

In the event of mobilization (in 1914), the Intelligence Bureau was going to have the following composition:

– lieutenant colonel Eracle Nicoleanu,[2] head of the Bureau, with the mission of "Getting the news";

– "Main performers";

– chief major Nicolae Condeescu,[3] assisted by major C. Georgescu and captain Gheorghe Bereşteanu,[4] with the mission of obtaining information from the allied armies, from the State General Security and from the press; drafting the "daily information bulletin";

– captain Alexandru R. Dumitrescu and lieutenant Virgil Popovici, with the mission of knowing the order of battle and the deployment of the Austro-German armies;

– reserved captain G. Păunescu and lieutenant Ştefan Berechet,[5] with the mission of obtaining information on the order of battle and the deployment of the armies in the Balkan Peninsula – Bulgarian, Turkish and possibly Austro-German;

– lieutenant Octav Ullea,[6] adjutant of the Intelligence Bureau, with the mission of knowing the order of battle and the deployment of the units of the Russian Army;

– administration students Iordache Curelaru and Constantin Moisiu – typewriters ("writers with tools");

– N. Mihăescu – archive and materials;

– I. Cârlănescu and Ştefan Papaion – painters [1, p.96].

After two years of neutrality, on August 14/27, 1916, Romania entered the First World War on the side of the Entente, pursuing the annexation of Transylvania to the Kingdom of Romania. With the mobilization of the Romanian Army, the Instructions for the operation of the Intelligence Bureau during the operations were issued [9, p.202-211]. Also in 1916, two documents related to the agency's activity were adopted, entitled Information Reception Guide [1, p.33-35] and The Method to be Followed in Information Offering [1, p.174]. In the last document it was said that, "Any informer in order to be able to give valuable news, which can be of real service to an army, must be guided by the following principles":

– to send information in due time;

– to specify whether the obtained data has been seen personally or received from a trusted person;

– to point out whether the data obtained from someone has been verified;

[2] Later he became prefect of the Capital Police (1918-1930) and commander of the Romanian Gendarmerie (1930-1931) [6, note 158 of XII Chapter].

[3] In 1919 he became Prince Carol's adjutant, and in 1930-1931 he held the position of Minister of War.

[4] He was among the officers decorated during the First World War with the "Mihai Viteazu" order, of the III class.

[5] About the activity of Ştefan Berechet, see:12, p.171-177.

[6] He would later become marshal of the Royal Palace during the reign of Carol the II and Mihai the I. He was the cousin of Lucreţiu Pătrăşcanu [4, p. 472].

– to signal troop movements in a region (indicating the place, day and time), their presence or absence;

– if the information was obtained from the newspaper, the name of the newspaper and the date of publication should be indicated;

– to write exactly (correctly) the name of the locality, river, etc., indicating in brackets the name used by the locals [1, p. 174].

At the beginning of June 1917, the staffing situation of the Intelligence Bureau in the Great Headquarters of the Romanian Army, with officers and civil servants, presented itself as follows:

– the head of the Intelligence Bureau: colonel Nicolae Condeescu;

– Intelligence Sub-Bureau: lieutenant colonel Virgiliu Bianu[7], major Gheorghe Păunescu, major Alexandru R. Dumitrescu, captain Octav Ullea, reserved lieutenants Ștefan Berechet, Florian Bogdan, Ion Tohănesnu;

– Counterintelligence Sub-Bureau: major Ioan Tăranu[8], reserved lieutenant Gheorghe Trifu, commissioners Gheorghe Bârzescu and Vladimir Palada[9], sub-commissioner Ilie D. Soare, agents Ion Agăgeanu and P. Teodorescu, secret agents Aurel Moldovan, Gheorghe Iovin, Alexandru Durma; special agents: lieutenant Virgil Popescu, Filipescu Emanoil, Virgil Bădulescu, Anton Voiculescu, Liviu Miron;

– Communications Service: reserved second lieutenant Ștefan Lascăr, translators Vasile Meruțiu, Aurel Doroftei, Virgil Popescu, Constantin Papuc Secelea, Ion Zinca Georgescu;

– Military Attaché Service: reserved captain Scarlat Lahovari;

– Tipo-Cartography Service: painter, lithographer;

– Photographic Service: reserved lieutenant [1, p.13-13 verso].

As long as, there were four Russian armies on the Romanian Front – 4th, 6th, 8th and 9th – Romanian military intelligence agencies collaborated with similar Russian services in Moldova. Next to each Russian army was attached a Romanian delegate from the Security Service of the Great Headquarters of the Romanian Army. However, in order to increase the informative effort and, above all, the counter-informative one, it was decided to create a joint Romanian-Russian specialized body. In the fall of 1916, the Romanian-Russian counterintelligence (counterespionage) service was established, with counterintelligence duties in the area of operations and behind the front line [5, p.18]. Romulus P. Voinescu[10], general inspector of the State Police, assisted by sub-inspector I. Vameșu, Theodor N. Culitza from the Capital Police Prefecture and commissioner Ioan I. Georgescu[11], was appointed to lead it. The Russian military authorities delegated to this service, colonel Evgenii Aleksandrovichi Leontovichi (Commander), assisted by lieutenant-colonel Bondarenco and a number of about 100 Russian officers, officials and civil agents. The headquarters of the Service was in Roman [5, p.30], and its activity was carried out under the direct coordination of the Great Headquarters of the Romanian Army, through the Intelligence Bureau headed by General N. Condeescu [5, p.27].

From the memoirs of Theodor N. Culitza, Romulus P. Voinescu's personal secretary at this Service, we learn that, the Romanian-Russian Counterintelligence Service "came into existence late in the fall of 1916, long after our entry into action and after the withdrawal in Moldova". Until 1916, information activities were carried out by agents from the Security Police, attached to the

[7] Later he will become deputy general director of State Security, deputy general director of the General Police Department, general inspector of State General Security, author of the excellent work Public Order. Professional Guide in Police Science. Bucharest, 1938.

[8] Major Ion Tăranu was the Chief of the Intelligence Bureau of the Division Group "General Ioan Popovici" (The IX and X Infantry Divisions of the 5th Army Corps), who was in Bessarabia during the first years after the Great Union.

[9] About his activity, see: [7].

[10] About Romulus P. Voinescu, see: [8, p. 299-300].

[11] About Ioan Georgescu see more detail in: [7, p. 207-209].

Military Commands [5, p.13].

In the field, the Service (the Romanian side) was divided into sectors, which changed their territorial configuration, depending on the movement of the front:

– on the southern front, in Bessarabia, (in the sector of the 4th Russian Army, under the command of General Andrei Zaioncikovskii[12]), starting from the Black Sea and the mouths of the Danube – Basarabeasca – Tatar-Bunar – Bolgrad – Cahul, it was the sector led by police prefect Florian Cristescu;

– in the south of Moldova, on the Danube (Galaţi), (in the sector of the 4th Russian Army, the units of the Romanian Navy and up to the 6th Russian Army), it was the sector led by inspector Dumitru Zahiu[13];

- in Galati, with a reach towards Braila and Tulcea (Dobrogea), was the sector led by inspector Grigore Ştefu[14];

– to the north of Galati towards Tecuci (the area of the 6th Russian Army, commanded by General Dmitrii Shcherbaciov, and the 1st and 2nd Romanian Armies), was the sector of the inspector Zaharia Husărescu[15];

- from Neamţ county and up to Câmpulung, in Bucovina (area of the 9th Russian Army), was the sector led by the inspector I. Vameşu;

- in the interior area of Dorohoi County and Botoşani County, there were the sectors led by service chiefs I. Constantinescu, I. Alexandrescu and Floru, and in the interior area of Suceava (Baia), Neamţ, Tutova and Tecuci counties were the sectors of the chiefs of service Ştefan Tălăngescu, Costică Dumitrescu, Trăilă Petrescu, I. Popovici and C. Duca [5, p.30].

Sectors were divided into sub-sectors, headed by commissioners with agents' teams. The teams were mobile, in continuous movement on the roads and through the communes, for the identification and verification of suspicious persons, the surveillance of traffic in the interior area, being also collected information of a military nature [5, p.30-31]. By two agents (one Romanian and one Russian) there were sent to different localities near the front to supervise and discover facts "to the detriment of the army" [9, p.103].

The staff of the Service constituted of officers, commissioners and agents experienced in intelligence and counterintelligence activity. They had special IDs on them, written in Romanian and Russian, with the owner's photo and signed by Romulus P.Voinescu. They received instructions on traffic restrictions, which the population had to respect when traveling on roads, railways, waterways or in the area of military operations; they also had provisions regarding the supervision of foreign citizens in Moldova and, in particular, of those released from internment camps [3, p.221]. The enemy's propaganda action also had to be countered (for example, behind the front, newspapers printed in occupied Bucharest were spread, such as the newspaper Lumina, in which "the state of affairs in the territory under enemy occupation was described in a flourishing manner, showing that there is plenty life there and a lot of money") [5, p.34].

The entire intelligence and counterintelligence activity was reported to the head of the respective sector, who, after verifying the information, was sending it to the head of the Romanian-Russian Counterintelligence Service. Then, the information was analyzed, systematized and

[12] Reported on the situation on the front in Moldova in his memoirs [11].

[13] In 1919, Dumitru Zahiu became head of the Bessarabian Security and through his activities consolidated the institution in Bessarabia. Then, on July 15, 1920, by ministerial decision no. 32.008-S of July 6, 1920, he was delegated with the leadership of the Special Security Service of Dobrogea, with residence in Constanta, on his place, in Chisinau, being appointed Z. Husărescu [7, p. 221].

[14] On February 21, 1920, Grigore Ştefu was transferred from the position of police prefect of Cetatea Albă county, to the leadership of the police prefecture of Constanţa county. Z. Husărescu was appointed in his place at Cetatea Albă [7, p. 220-221].

[15] About Zaharia (Zinovie) Husărescu, see: [7, p. 219-232].

most importantly, reported to the Intelligence Bureau of the Great Headquarters. The persons arrested for espionage activities or detained on suspicion of espionage were submitted by the heads of sectors directly to the Great Headquarters, with the prepared documents and all the attached evidence [5, p.30-31].

In order to concretize the norms of the Service's activity, at the beginning of 1917, the Regulations of the Romanian Counterintelligence Service were drawn up, in collaboration with the Russian Counterintelligence Service", which determined the missions of the Service – countering enemy espionage and other crimes committed against the two armies, both in the area of operations and in the interior area (behind the front line). The powers of Russian and Romanian officers and agents were also established: drawing up documents, detaining or arresting suspicious persons, etc. The special activities, which targeted Romanian citizens, had to be undertaken only through the Romanian authorities. Within the framework of the Romanian-Russian Counterintelligence Service, the exchange of information between the Romanian and Russian authorities on the suspects had to take place, the establishment of special observation posts in the interior area, and the movement of the population to be made only on the basis of special permits, issued by the Military Commands. The officials of the administration and the Romanian civil police were obliged to offer all the competition of this Service: sector chiefs and police officers from the Counterintelligence Service were to work with the chiefs of police and security offices throughout the hinterland in information gathering to the military interest, to request, as necessary, assistance from the civil police in carrying out investigations, arrests and searches [5, p. 13-15].

The Romanian-Russian Counterintelligence Service had a formidable opponent – the German Secret Service, which was "indeed the largest imaginable espionage organization". As emphasized by Th. Culitza, in the field of intelligence and counterintelligence "the Germans were the greatest". The German intelligence agencies in Romania knew very well "the entire situation on the front, as well as the organization of the resistance behind the front, supplies, ammunition and food depots, hospitals, public institutions, with activity for the organization of the resistance in the populated centers of the cities and centers of communication, etc.".

However, due to the agency's activities carried out, the Service identified a number of 2,500 suspicious persons, who supported or worked in favor of the Central Powers. Their identification and surveillance led to the annihilation of several enemy agents of espionage, propaganda and terrorism. Among the spies caught behind the front, there was also a group of individuals who were part of a famous espionage organization, led by Colonel Fischer of the Austrian Gendarmerie. Among those arrested were Păvălucă, Katz, Hausffater, Mieier Gross and others. They were operating behind the 9th Russian Army in the north of Moldova and had as their sector of work Iasi – the capital of Romania at the time – from where they could obtain information about the military intentions of the Romanian and Russian troops.

When the spy Katz was arrested, he had in the lining of his sheepskin hat, the defense plans, with the devices of the troops and trenches around the city of Fălticeni, written topographically on small pieces of paper.

Păvălucă was a skilled spy, who knew the region very well, as he was originally from these places and perfectly spoke the Ruthenian, Ukrainian and Romanian languages. He very often passed the front of the Russian armies in the north of Moldova, disguised as a Russian soldier, making contact with the spies behind the Romanian-Russian front. He had many trusted people among the peasants of Bucovina and those of the mountainous region, whom he paid with tobacco, sugar and other foodstuffs procured from the Russians, to whom he gave in return spirits brought from Austria. Before being arrested by the Romanian-Russian Counterintelligence Service, Păvălucă was caught by the Russians, but managed to escape.

Another dangerous spy, who was caught on the southern front, in Bessarabia, was a certain

Kalpacioglu, a Russian subject, who worked in the interest of the revolutionary organization in the south of Russia – "Rumcerod"[16], based in Odessa. Although he was active in the interest of "Rumcerod", during the investigations, it turned out that he was also spying in the interest of Bulgaria and Turkey [5, p.32-34].

After the World War I, based on the accumulated experience, recourse was made to a modernization of military intelligence and counterintelligence structures. On April 1, 1920, the General Staff issued the Instructions Regarding the Formation in Each Garrison of an Intelligence Bureau [9, p.138-139, 278-281], with the mission of collecting data on internal threats and dangers and combating subversive (anarchic) propaganda among the military. In this sense, each intelligence bureau had to have an agency and collaborate with the local Security bodies, with the headquarters of the stations, with the heads of the national trade unions, etc.

In 1924, the Secret Intelligence Service of the Romanian Army was established. It was the first distinct structure of the Romanian Army, specialized in intelligence and counterintelligence. It was founded, organized and led until the beginning of September 1940, by Mihai Moruzov [10, p.13] – one of the main founders of the modern Romanian intelligence services.

Conclusions. The union of the Principalities determined the establishment of a modern intelligence structure, necessary especially for the army. Thus, within the General Staff of the Romanian Army, Section II became the first intelligence service of the Romanian Army and of Romania. Later, the structure responsible for the informative and counter-informative action had different names and organizations. During the First World War, the Romanian military intelligence agencies collaborated with similar Russian services in Moldova, and for a more effective inter-allied collaboration, the Romanian-Russian Counterintelligence (Counterespionage) Service was established. After the World War, the Secret Intelligence Service of the Romanian Army was established, which was the first distinct structure of the Romanian Army, specialized in intelligence and counterintelligence.

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[16] Rumcerod (Russian acronym for the Central Executive Committee of the Soviets of the Romanian Front, the Black Sea Fleet and the Odessa region) – revolutionary Bolshevik body, temporarily installed in Ukraine, with powers over the territory of Bessarabia, in the context of the Russian Empire disintegration. It tried to prevent the intentions of the State Council in Chisinau, to declare the independence of Bessarabia, arresting the Romanian refugees in Odessa and summoning Romania to withdraw its troops from Bessarabia.

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ADVOCATING FOR COMMUNITY WATCH TO BE A LAW UNTO THEMSELVES

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Summary

When comes to crime prevention, there is a set of short and long-term measures that wish to discourage wrong behaviors, but to improve public safety and reduce crime, all studies start by mentioning community oriented policing (COP). From the position of trust and cooperation invested in both the community and law enforcement structures, prevention and reduction of crimes grows towards the acquisition of social capital which eventually becomes power. This sociological perspective lacks a quantitative analysis regarding the number of avoided conflicts as pro bono actions without a trial bring impractical results, likewise, solo approaches fail under the vicarious liabilities. Nonetheless, at the end of the 20th century, COP appeared as the best technique which applied to all neighbourhoods and addressed various needs of these. The popularity of neighbourhood watch made American communities proactive in assisting law enforcement even from 1972, but at the European level, serious endeavours were initiated only after 2018 with a comprehensible toolbox, No. 14, elaborated with the help of legal practitioners. Had it been enough brought into the light, securing and strengthening communities wouldn't have been a critical point for the legislative.

Keywords: community oriented policing, crime prevention, social capital, habitus, COP, toolbox, securing policies.

Introduction. Utopian or not, crime prevention aims to eliminate the acts of misdemeanours and felonies through a set of regulations that can deter such behaviours. Safety issues in times of uncertainty and paced changes become challenging endeavours for the law enforcement agencies due to the impossibility of maintaining order and keeping an eye on each and every corner of a neighbourhood; this is where community watches or community order policing (COP) steps in offering a solution to safety issues. Over time, the concept of crime prevention has undergone various transformations, but, the most significant, it started from being viewed as a narrow policing measure and lately evolved into a more coherent and comprehensive approach linked on to a numerous number of states and community stakeholders.

The concept of COP is a multifaceted approach, combining a social structure theory, a modern management theory, a communitarian theory or a broken window theory, all thronging towards "developing creative, tailor-made responses to specific problems and incorporating such prevention and intervention efforts into the mainstream of policing. Among other benefits, non-arrest strategies reduce the overload on the criminal justice system, making it a more viable alternative for appropriate matters" [7, p.8]. Nevertheless, the state spans multiple sectors and levels of government along with civil society's involvements in order to uphold justice; formal restrictions make extensive use of economic, social, and political implications mainly in densely populated urban centers which means crime prevention strategies require a deep understanding of societal needs and a commitment to collaborative problem solving by giving authority to citizens to apprehend possible offenders and transferring this piece of information to the right authority.

Building social capital or merging community trust, law enforcement, and crime pre-

vention. In societies worldwide, the relationship between communities and law enforcement is fundamental to ensuring public safety and order. In recent years, the dynamics of this relationship have evolved and lead to shifts in societal values, governance structures, and crime patterns. At the heart of this evolution lies the concept of social capital [3] – the trust, cooperation, and networks within a community that contribute to its resilience and well-being, an interconnected and mutual dimension of other forms of capital: economic, social and symbolic capital. All these shape individuals' life trajectories and social positions and lately set social stratification, mobility and domination.

Social capital can operate on both sides: on the one hand, the communities that watch over the safety of their neighbourhoods, or, on the other hand, by compassing the trust, reciprocity, and social cohesion within communities and social networks, it can provide social support for the villain as well. The best possible goal improving communities' social capital is enhancing individuals' resilience in the face of adversity while manifesting a strong tendency to reduce inequality.

"Social capital is the aggregate of the actual or potential resources which are linked to possession of a durable network of more or less institutionalized *relationships* of mutual acquaintance and recognition – or in other words, to *membership in a group* – which provides each of its members with the backing of the *collectively-owned capital*, a "credential" which entitles them to credit, in the various senses of the word. These relationships may exist only in the practical state, in material and/or symbolic exchanges which help to maintain them. They may also be *socially instituted and guaranteed* by the application of a common name (the name of a family, a class, or a tribe or of a school, a party, etc.) and by a whole set of instituting acts designed simultaneously to form and inform those who undergo them; in this case, they are more or less really enacted and so *maintained and reinforced*, in exchanges" [3, p. 21].

There are several common features between Bourdieu's definition of social capital and community-oriented policing (COP) as it follows:

1. Building better relationships between police officers and community members: The main focus of COP is building trust and cooperation just as a bridge between law enforcement agencies and the communities they serve. Similar to the social capital, generally based on mutual acquaintance and recognition within a group, COP seeks to foster positive relationships and mutual understanding between police officers and community members. The COP's mission is both to establish durable networks of relationships and to enhance social capital within communities, which in turn facilitates effective crime prevention and problem-solving efforts.

2. Membership in a group: COP recognises the importance of community membership and participation in crime prevention initiatives; communities are viewed as social groups with shared interests and resources, thus COP encourages active engagement and collaboration among community members to address local crime issues. Leveraging individuals' social capital is the result of a collective effort to enhance public safety which finally gives access to various resources, support, and expertise within their communities.

3. Collective ownership of safety: social capital involves collectively-owned resources within a group and COP emphasises the collective responsibility for public safety and crime prevention. Through identifying priorities, developing strategies or implementing interventions, COP can rich the desired final goal: reducing crime and improving life quality. Eventually, by sharing ownership of safety as a form of social capital, each individual contributes and benefits from this collective effort.

4. Continuous support: each crime prevention initiative asks for a permanent supervision and maintenance and alike social capital, it is sustained through ongoing communication, collaboration, and problem-solving efforts. The methods that allow continuity to these can be material (information sharing, resources allocation), but symbolic (gestures of goodwill, expressions of appreciation) too.

European endeavours. Toolbox No. 14. Due to the collaboration between the European Crime Prevention Network Secretariat (EUCPN) and the European Union Agency for Law Enforcement Training (CEPOL) and other experts in law studies, the Toolbox No.14 [2], became one of the most comprehensive study with three chapters: Introduction, Ten key principles, and Experts review on best practices, ended with conclusions, recommendations, bibliography and annex for good practices.

From the first chapter, we find out that the police reform from the 1970s imposed a new vision against the shortcomings of traditional law enforcement methods; not much can be said about singular measures meant to prevent law breakdown as prevention addresses a wide range of challenges. It became increasingly clear that combating crime required more than just a reactive response – it necessitated forging closer ties with the communities being served. Nevertheless, critiques of reactive policing styles began to surface, highlighting their limitations in effectively preventing crime at the local level.

The first initiative with COP started from the latter half of the 20th century in the context of a variety of societal change and shifting dynamics: "Contributing to the major current concern regarding law enforcement is the growing awareness of the fact that the police are simply not equipped to respond adequately to the increasing demands being made upon them" [5, p.1123]. The rationale of this approach was to respond to a number of factors while enriching law enforcement strategies. Even though the period in question is around the Second Word War with all the benefits of the technological advancement, countries like Germany, France, and England had to face police reduction. This forced them to rethink how they approached law enforcement in a rapidly changing world and to give a natural development for public and private organizations to employing various operational techniques as "The developing interest in the concept of COP in Europe at the end of the 20th century was a product of context and contingency. It signaled that many police institutions were disengaged from their communities" [4, p.17].

Herman Goldstein [5] or the father of the COP philosophy is recognized to have integrated theoretical underpinnings like identification and analysis of recurring problems and practical applications as the procedures to be followed by officers in order to identify the roots of the problem or to propose long-term solutions. Therefore, Goldstein's seminal work provides both a theoretical framework and actionable strategies which have influenced policing practices worldwide. From a reactive and narrow perspective, Goldstein made a shift towards more specific and individual incidents by prioritising proactive and solution oriented approaches as it can be observed in "Improving Policing: A Problem-Oriented Approach" article from 1979. The theories that followed didn't have the same pattern, mainly because it functions as a chameleon strictly applied to the environment it serves on.

The ten important factors for the successful implementation of COP are:

1. *COP is a built-in component of a larger government system*: this means that COP is part of a bigger picture which asks for support, supervising government, but also to have efficient communication and equipping policemen with the resources necessary for the success of the strategy. "In addition to understanding COP, there is a responsibility for politicians and policy makers, having made the decision to take a COP approach, to communicate about it. The lack of a publicly stated commitment at the highest level may be a barrier for subordinates in implementing COP" [2, p.36].

2. *COP is commitment* for all the parties involved in this process; once, the communities should justly estimate the work of a policeman and on the other hand, the police officers should see this commitment more than just an extra task. "If the COP approach is not accepted by the entire police organisation, it will not yield the expected results. In turn, this can lead to a promising approach being discarded because of problems in implementation" [2, p. 41].

3. *COP requires qualitative measurement*. These factors enable feedback remarks in terms of public satisfaction and public cooperation. "Police officers who are willing to learn new skills

should be considered for incentives such as promotion opportunities and should have their achievements formally recognised" [2, p.43].

4. *The new generation of COP relies on technology* as a way of facilitating interaction and communication. "Lewis and Lewis researched the use of a community crime web forum by citizens in order to investigate how citizens use technology to support COP efforts. They analyzed forum posts and learned that the forum was mainly used for building relationships by strengthening social ties, discussing ways to take collective action, sharing information and advice, and regulating the social norms of the neighbourhood and the web forum itself. According to Lewis and Lewis, this suggests that technologies should be designed to support communication and problem-solving discussions, rather than merely providing information to citizens" [2, p.48].

5. *Police officers need to be properly trained to make COP work*. The key difference here made by CEPOL is training as different from education and the success of COP depends on educating five target groups: government, police leadership, COP officers, ordinary police officers and communities. "In terms of more practical training, the offer from the agency would have to focus clearly on a European dimension and/or cross-border relevance. A good practice example of support from CEPOL in the recent past might be the hosting of the online learning module: 'Community policing and prevention of radicalization', based on the EU-funded CoPPRa project, accessible to registered users of the CEPOL e-Net platform from all EU Member States and CEPOL partner countries" [2, p.57].

6. *COP should always be locally embedded*. The major issue here is represented by the communities that lack trust in the police officers, so regaining trust into the law enforcement officials may take a lot of time.

"Some relevant elements with regard to COP are the historical distrust between citizens and police, and the available social capital on which the police can draw" [2, p.60].

7. *The presence of familiarity* leads to better relationships between police officers and the community. "It is important that sufficient time is taken for the community to get to know the police officers and for the police officers to understand how the community operates. Police officers spend 80% of their time dealing with citizens during their daily work. This forms a key task" [2, p.61].

8. *The police should learn about and address local needs*. The in-depth strategy demands finding the causes of the problems through analyzing repetitive patterns. "The police can reduce crime and disorder by using a structured problem-solving process to understand and tackle the root causes of local problems. To learn about local needs, it is important to avoid a one-sided perspective when gathering information on the concerns of a community. To address local needs, it is important to determine the underlying causes of problems and to focus on recurring patterns of incidents, rather than on isolated ones, so that a full and appropriate response can be designed" [2, p.69].

9. *Collaborative security production* is about sharing the same perspective upon security from the intergovernmental part and the police forces. "Collaborative security production also relates to intergovernmental cooperation, since solving community problems is a task that involves all relevant state agencies. A broad consensus must be reached, with all agencies present in a community environment, talking about their share of responsibility and the need for close cooperation. Incoherent policies across the criminal justice sector and other state agencies related to solving community problems should be harmonized" [2, p.71].

10. *Two-way communication* is about being approachable and effective when you communicate even in communities with a law level of social capital. "Research has shown that people who are well informed about policing tend to have more positive opinions of the police. They are likely to be interested in information about COP and police performance, and in crime prevention advice" [2, p.77].

In Romania, *Broken Wings* is a project specially designed for a vulnerable category of people: women that were victims of domestic violence. It started on the 1st of July 2016 due to the high numbers of occurrences of physical and sexual violence and after the internal evaluation of the project, there was a 8.5% increase in the numbers of complaints registered by the police. Furthermore, it was a significant raise of trust in the law enforcement agencies.

Another good example is Sweden with *Safe and Secure* events in which the purpose was to raise awareness over sexual abuse via shared materials; the results show an increase by 90% of reported social offences in one year.

Austria implemented *Security. Together in Austria* after the authorities noticed that even though the occurrences of crime have decreased, people are still having a sense of fear about the community they live in. Communication was a key tool in implementing a bridge between the police officers and the communities.

Conclusion. COP projects throughout the European communities addressed a wide range of problems and concerns that did not have an echo in the lawful measures adopted by the Government. Through collaborative work and sponsors, these projects became not impersonal proceedings, but highly personal and deeply appreciated undertakings that reshaped the way communities see police officers and empowered vulnerable categories to give an official voice to their complaints covered until now in distrust.

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THE ISSUES OF LEGAL-CRIMINAL PROTECTION OF COMPETITIVE RELATIONS AGAINST MISLEADING THE CONSUMERS

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Summary

An authentic market economy is inconceivable without respecting the constitutional principles by which the market, economic initiative, and fair competition are declared the basic factors of the economy. Connecting the national legislation to the provisions of the international acts, the local legislator adopted a series of normative acts dedicated to the regulation of competitive economic relations, and the protection of the rights and interests of consumers and economic agents engaged in entrepreneurial economic activity. The criminal legislation of the Republic of Moldova also contains a series of legal-criminal rules designed to ensure the protection and normal development of economic relations, including competitive ones, of the rights and legitimate interests of loyal competitors and consumers.

The article is dedicated to an analysis of the crime of unfair competition committed by misleading consumers regarding the nature, the manufacturing method, the characteristics, the suitability for use or the quantity of the competitor's goods, an act provided for in Art. 2461 of the Criminal Code of the Republic of Moldova carried out by referring to the provisions of the legislation in the field of competition and consumer protection.

The authors carried out a complex study of the researched problem, a fact that allowed them to draw certain legal conclusions regarding the quality of the analyzed provision, but also to identify proposals for improving the normative provisions.

The study was based on the opinions of doctrinaires selected from the specialized literature, and the provisions of the legislation in the field, using an arsenal of scientific research methods such as historical, logical, analysis, etc.

Keywords: unfair competition, competitors, consumers, consumer protection, misleading, customers, clientele, diversion of clientele, merchandise, products/services, economic agent/enterprise.

Introduction. It is well known that the modern economy is based on three basic economic directions: production, distribution and consumption of goods, products and services, the consumer market being one of the main sectors of the economy, a significant part of crimes (out of the total number of economic crimes), being committed in the respective sector.

It is precisely in this field that the main battle between competing entities (economic agencies) takes place to attract consumers/customers. Often this struggle is waged illegally and by illegal (and, in our opinion, criminal) methods. The possibility of committing crimes in the consumer market is largely because government involvement in this sector of the economy is somewhat limited. The Constitution of the Republic of Moldova itself proclaims that the market, free economic initiative, and fair competition are the basic factors of the economy [1, Art. 9 para.(3)].

The criminalization of this field of economic activity leads to a negative change in the entire system of socio-economic relations. In addition, the consumer market sector, along with the credit and financial sectors of the economy, has become an area of priority interest for organized crime, whose representatives try to occupy strategic positions in this field to later influence the decision-making process in the economic activities of the state.

Thus, countering this type of (economic) crime is, at the current stage, one of the strategic tasks of the state, as crimes committed in this field cause enormous damage to the interests of the state, implicitly to the economic agents involved in entrepreneurial activity but also to private ones (the interests of consumers).

The connection between the rules on the protection of consumer rights and the rules of antimonopoly legislation has been addressed for a long time in the legal literature. For example, O.N. Zimenkova, in her work dedicated to the protection of consumer rights in foreign countries, emphasizes: "The main goal of the participants of the competitive struggle, which is why they resort to various unfair procedures and methods, is to attract a maximum number of consumers (customers) and marketing as many goods and products as possible. For this purpose, entrepreneurs not only look for new methods of competition, but also violate the rules of competition applied between product manufacturers and between traders, including, using such unfair methods in relation to consumers (customers). Therefore, the protection of consumer rights ultimately not only aims so much to create an effective barrier to low-quality goods and services, but also to simplify and effectively regulate competitive relations and the competitive struggle between capitalist entrepreneurs" [2, p.1-2].

These reasoning's led the international community to adopt a series of normative acts dedicated to the regulation of the fields of economic activity, including that of the protection of competition against unfair behavior, contrary to customs and the rights and interests of consumers, which inspired the legislators of the national states to adopt their regulations aimed at ensuring the realization of the legal rights and interests of the participants in the consumer market.

Analyzing the current national legislation, including criminal law, we observe a close connection between the legal institutions dedicated to the protection of consumer rights and those intended to protect against unfair competition.

The legal act in force that addresses the issue of competition protection (implicitly, the rights of honest competitors) but also the rights of consumers is the competition Law No. 183 of 11.07 2012.

Thus, the competition law establishes the legal framework for the protection of competition, including the prevention and countering of anti-competitive practices and unfair competition, the realization of economic concentrations on the market, including the responsibility for the violation of the legislation in the field of competition, and the purpose of this law is to regulate the relations that for the protection, maintenance and stimulation of competition in order to promote the legitimate interests of consumers.

Thus, subjects of economic relations of consumption are recognized, on the one hand, consumers, another subject of the mentioned relations is the producer, executor or seller of products or services (designated in the legislation by the term economic agent or enterprise). The latter also appear as *competitors* in this consumer market, being engaged in economic activity (defined in the competition law as "*any activity that consists in offering products on a certain market"),* including, in competitive relations, competition being defined in the same law as "*economic rivalry, existing or potential, between two or more independent enterprises on a relevant market, when their actions effectively limit the possibilities of each of them to unilaterally influence the general conditions of circulation of products on that market, stimulates technical progress -scientific and increasing consumer welfare*".

For the first time, the consumer option was defined in Law No. 105 of 13-03-2003 on

consumer protection [5]. Thus, *a consumer*, in the sense of the mentioned law, is considered "any natural person who intends to order or procure or who orders, procures or uses products, or services for needs unrelated to entrepreneurial, industrial, craft or professional activity".

Accordingly, the consumer is the natural person who purchased the product, merchandise or service and uses it, including the one who intends to purchase it (for example, the citizen who asks the seller to present the product, describe its characteristics, how to use it, etc.). The consumer will be considered not only the person who procures the product or service, but also the one who directly uses this product or service for personal purposes, for daily use.

A similar but not identical meaning is given to the notion of the consumer by the Competition Law mentioned above, according to which "consumer – user, directly or indirectly, of products, including a manufacturer who uses products for processing, a wholesaler, a retailer or a final consumer".

It is easy to see that the notions presented do not coincide in terms of their volume, the area of consumers defined in the competition law being extended to the people who participate in the entrepreneurial activity, having the quality of producer or trader, the final consumer that the cited normative act has in mind is identical to the concept of consumer-defined in law no. 105/2003.

As for *the competitors,* i.e. the subjects of competitive relations participating in the economic circuit, the competition law defines them as "independent enterprises that are active in a relevant market, in turn, the enterprise is any entity carrying out an economic activity, regardless of its legal status and the way it is financed, the independent – any enterprise, possibly consisting of several legal entities or natural persons, which sets its business policy autonomously from other enterprises".

In turn, the Consumer Protection Law identifies competitors through the notion of an *economic agent*, which can be "any legal or natural person authorized for entrepreneurial activity, who manufactures, transports, markets products or parts of products, provides services (executes works)", specifying their quality in their relations with consumers, such as:

1. Merchant: any natural or legal person who, in the commercial practices that are the subject of this law, acts in the framework of his commercial, industrial, production or craft activity, as well as any person who acts for commercial purposes, on behalf of or for the benefit of a merchant;

2. Distributor: economic agent in the distribution chain, other than the manufacturer or importer, who makes products available on the market and ensures the transfer of the title of the product from the manufacturer to the consumer;

3. Executor: any natural or legal person, authorized for entrepreneurial activity, who performs work in relation to consumers;

4. Provider: any legal or natural person authorized for entrepreneurial activity, providing services;

5. Producer:

– economic agent that manufactures a finished product, a component part of a product or raw material;

– economic agent who applies his name, trademark or other distinctive sign to the product;

– economic agent who reconditions the product;

– economic agent that modifies the characteristics of the product;

– representative of an economic agent registered in the Republic of Moldova, whose seat is outside the Republic of Moldova;

– economic agent importing products;

– distributor or seller of the imported product if the importer is not known;

– distributor or seller of the product, if the importer cannot be identified, if he, within 30 days of submitting the request, has not informed the injured person about the identity of the importer;

6. Seller: any legal or natural person authorized for entrepreneurial activity, which acts, including on its behalf or on its account through another person, for purposes related to the commercial, industrial, craft or professional activity of the respective legal or natural person in the relations with consumers;

In this way, the notion of the consumer includes both economic agents (enterprises) involved in economic activity (which produce, distribute, distribute, and market, etc. goods and products, including, consumption, for production or manufacturing, marketing, etc.), as well as the so-called final consumers for whom the goods or products are intended (and whom they directly or indirectly use/use) and for whom the competition between competitors takes place.

Discussions and results obtained. Among all the unfair competition actions prohibited by the provisions of Article 14 of the Competition Law [3, Art.15-19], the most common, according to experts, is "misleading the consumer regarding the nature, method and place of manufacture, the main characteristics, including the use, the quantity of the products, the price or the method of calculating the price of the product", an act called generic *diversion of the competitor's clientele* [3, Art.18].

According to the DEX [4], by the *customer* is meant "A person who buys (regularly) from a store, consumes something in a public place, etc., considered concerning the person or company from whom he buys or consumes", the indicated synonym for the given notion being *consumer,* and *the clientele* represents "the totality of customers, the crowd of customers".

Regarding the term *embezzlement,* according to the DEX, the closest sense in which it can be used to identify the fact invoked would be "to force someone to change or illegally change the route, direction of flight of an airplane". Obviously, in the situation assumed by the competition law, the term would mean attracting the competitor's clientele in good faith to its goods or services, determining the customer to adopt trading in favor of the perpetrator, in other words, to make the customer choose the competitor's products or services to re- faith.

The criminal liability for misleading the consumer having the effect of injuring the rights and legitimate interests of the latter was established by supplementing the Criminal Code of the Republic of Moldova with Art. *246[1] Unfair competition* by Law No. 110 of 27.04.2007, the provision of the cited norm mentions both the notion of consumer and competitor. According to letter c) Art.246[1] of the CC, it is considered an act of unfair competition "*to mislead the consumer regarding the nature, the manufacturing method, the characteristics, the suitability for use or the quantity of the competitor's goods"*.

Until the mentioned moment, the criminal legislation of the Republic of Moldova (Criminal Code of the Republic of Moldova from 1961) contained criminal rules that were intended to protect the rights and interests of natural persons – participants in economic relations, only that they were identified, either as '*clients'* (in the case of Art. 160 *2 [Deceiving] clients)*[1], either as '*beneficiaries'* (in the case of Art. *141[2] – Violation of the right of the holder of the title of protection regarding objects of industrial property)[2].*

In this way, we can draw an obvious conclusion – Art. 246[1] letter c) of the Criminal Code of the Republic of Moldova is intended to protect a specific spectrum of social relations, namely, the economic relations of consumption through which, from our point of view, we will understand the social relations that arise between producers, performers and sellers (including intermediar-

[1] The provision of art. 160 2 established criminal liability for „Exceeding the established retail prices, as well as the prices and tariffs for social and communal services, provided to the population, cheating on the account or any other misrepresentation", the customers being designated as "those who make an order to social service enterprises of the population and the communal household".

[2] Art. 1412 punishes the act of "Producing, importing, exporting, storing, offering for sale or selling goods bearing false statements regarding patents, the origin and characteristics of the goods, as well as the name of the manufacturer or seller, with the aim of inducing misleading the other sellers or beneficiaries".

ies) of products and services and consumers, in the process of realizing the legitimate rights and interests (of a consumptive nature) of both entrepreneurs and consumers, through the conduct of economic activity (commercialization of goods and products, granting/providing services), on the one hand, and performing the consumption function, on the other hand. The objective of the analyzed legal-criminal norm is to ensure, per the constitutional principles, the priority defense of the interests of natural persons in the field of trade and consumption, including the protection of the principles of honest entrepreneurship and free, fair competition, according to honest customs, on the observance of which it is based the modern economy.

In connection with this, a natural question arises – the legal-criminal norm from Art. 246[1] of the Criminal Code considers the misleading of final consumers and consumers in the sense of their definition in the competition law (that is, the competitors themselves). We can deduce the answer from the analysis of the generic name of the act of unfair competition, prohibited to be committed by the provisions of Art. 18 of the competition law, namely, "the diversion of the competitor's clientele", but also from the provision of Art.246[1] of the Criminal Code, which in letter c) establishes criminal liability for "misleading the consumer regarding the nature, manufacturing method, characteristics, suitability for use or quantity of the competitor's goods".

In the specialized literature, including, distinguished studies dedicated to the problem analyzed by us, we identify various solutions. For example, the author Sorin Timofei in the context of the analysis of the objective side of the crime of unfair competition in the form of misleading the consumer claims that: "the victim of unfair competition is not only the consumer (who is misled, the mention belongs to us) but also the competing economic agent; the subject of unfair competition can only mislead about the competitor's goods, not about its goods [6, p.31]. We do not agree with the last part of the statement, which we will explain in the text below, the author basing his statement on the legal provision of Art.246[1] of the Criminal Code of the Republic of Moldova.

The author Iulian Moraru, also points us to the fact that the company/economic agent (competitor) can be recognized as a passive subject or victim/injured party of the crime of unfair competition. In his study on unfair competition in the context of private international law, the author states that "...if the affected enterprise (the enterprise whose legitimate rights or interests (possibly a non-resident enterprise on the territory of the Republic of Moldova, but with economic activity on the territory of the mentioned state) have been violated...), considers that the constitutive elements of the offense provided in Art. 246[1] of the Criminal Code, may submit a respective complaint to the criminal prosecution body under the provisions of the Criminal Procedure Code of the Republic of Moldova" [7, p.255-256].

The authors Sergiu Brînza and Vitalie Stati have a similar opinion, stating "In the case of the fact provided in letter c) Art. 246[1] of the Criminal Code of the Republic of Moldova, the victims are the consumer (misled) and the competing economic agent (discredited)", and the subject of the analyzed crime is the natural person, responsible who at the time of committing the act reached the age of 16, inclusive, legal persons (except public authorities). In addition, the subject must have the special quality of an economic agent, "...the competing economic agent being the subject of bad faith, engaged in the same legal relationship of competition in which the victim appears as a subject of good faith" [8, p.241, 246].

The author N.E. Fonareva believes that in the case of unfair competition in the form of misleading consumers "the law provides another type/mode of unfair/dishonest behavior – not concerning competitors, but concerning the clientele (consumers)" [9, p.11]. The author claims that only consumers (customers) can be victims of this crime, for which reason we will not support this opinion.

Thus, the active subject of the crime of unfair competition through the normative method of misleading the consumer (the so-called author of the hijacking) is recognized as the company/unfair competitor economic agent and the passive subject/victim – another honest competitor com-

pany that operates according to customs. However, according to the legislation, the diversion of the competitor's clientele is carried out by misleading the consumer, the latter by providing *false (lying), erroneous, inauthentic or incomplete information, or not being presented with information that must be presented* regarding the nature, the way and the place of manufacture, to the main characteristics, including the use, the quantity of the products, the price or the way of calculating the price of the product. Respectively, the legislation of the Republic of Moldova seeks to protect not only honest competitors, but also consumers for whose loyalty competitors fights. By consumer loyalty, we mean the migration of customers from one competitor to another, the choice of goods, products or services of one competitor over another. The loyalty and trust of customers/ competitors can be obtained through "*the prodigious effort of the economic operator manifested by the quality and characteristics of the product/service, the price, the way it is brought to the public's attention, advertising, packaging, efficiency, etc.*" [10]. The unfair competition will only be considered the situation when the migration of customers from one competitor to another will be due to the misleading of customers/ clients.

Considering our reasoning regarding the subject (active and passive) of the crime under analysis, set out in the text above, we consider it possible to define the special legal object of the composition of the crime from Art. 246[1] letter c) Criminal Code, as the basic rights of natural persons regarding authentic and truthful information in the framework of social relations that arise on the consumer market, as well as the rights of economic agents/ enterprises in the sphere of free, honest and fair competition.

Precisely in this issue, we consider it necessary to emphasize our point of view once more: due to the presumed lack of information of the consumer regarding the properties of the goods and services on the market, the legal-criminal protection is equally subject, both the rights individual data of natural persons provided by the legislation on the protection of consumer rights, as well as the legitimate interests of economic agents/ enterprises on the same market, protected under competition legislation.

Actions to mislead consumers/ clients have a great influence on the general state of the competitive field in the domestic consumer market. Taking advantage of the average consumer's ignorance and lack of information regarding the qualities and characteristics of some or other products or services, unfair competitors place their opponents (honest/conscientious competitors) in *a priori* losing conditions or situations. Strict compliance with competition law is in opposition to the economic opportunity expressed by the strategy of "survival" in an uncivilized market. As a natural result, the constitutional principles of the defense of individuals are put at risk by natural persons – subjects of economic relations, including the protection of economic agents against unfair competition.

The objective side of the fact analyzed, in this case, is "misleading the consumer regarding the nature, the manufacturing method, the characteristics, the suitability for use or the quantity of the competitor's goods" (letter c) Art. 246 [1] Criminal Code), has many together with the manifestation of unfair competition by discrediting a competitor ("spreading, in the course of trade, false statements that discredit the enterprise, products or entrepreneurial activity of a competitor" (letter b) Art. 246[1] Criminal Code). Practice shows that the differences between these forms of unfair competition are not always identified. In both cases, the advantages obtained by the competing enterprises consist of the influx of new buyers. In the case of misleading consumers, such an advantage is ensured, practically, in the same way as in the case of discrediting a competitor, through direct informational influence on the consumer. The methods of disseminating information may also be different; for example, in practice, quite often a situation can be encountered where misleading the consumer is a consequence of placing inappropriate/erroneous information on the packaging/label of a product.

However, in reality, the differences between the mentioned forms of unfair competition are

very significant. First, the misleading of consumers is a consequence of the dissemination not of negative information, but of positive information, and its content, respectively, refers to the activities of the person who distributes it. In the case of discrediting a competitor, the entity spreads information intending to humiliate the competitor and, therefore, cause the reflux of clientele, i.e. to reduce the number of potential buyers or beneficiaries of the services provided by him, if consumers are misled, the economic entity exalts own goods or products/services. However, in both cases, the information disseminated in one way or another does not correspond to reality. In addition to outright lies, this form of unfair competition can also be expressed in other forms. A necessary condition is the effect that the actions of an economic entity will have on the consumer's perception of certain product characteristics or other circumstances. Unfair competition can be a distortion of some circumstances (misleading) that can influence the consumer's choice.

The provision of Art.246[1] letter c) Criminal Code, mentions five such circumstances: *the nature, the manufacturing method, the characteristics, the suitability for use or the quantity of the competitor's goods.* In this context, it is appropriate to mention that the Competition Law No. 183/2012, in Art. 18 indicates additional circumstances regarding which the consumer is misled: *the nature, method and place of manufacture, to the main characteristics, including the use, the quantity of the products, the price or the method of calculating the price of the product.*

Misrepresentation of these properties or circumstances may involve either a false impression of their presence or a false impression of their level. For example, the quality (although the law does not mention such characteristics of the product) of a product can mean various characteristics that are considered as such in society. For example, strength, wear resistance, lifespan, absence of harmful impurities, health benefits, etc.

In addition, as it follows from the formulation of the analyzed form of unfair competition, the list of circumstances regarding which the consumer is misled is an exhaustive one. However, the list does not contain all the circumstances that matter to the consumer when choosing the goods (for example, the quality of the product (qualitative characteristics) mentioned by us above) or the price of the products indicated in Art.18 of Law No. 183/2012, an indicator very important to potential consumers. Outside the scope of this provision are other circumstances such as, for example, the date and time of manufacture of the goods/products. These listed characteristics are, to one degree or another, important for consumers when deciding to purchase goods. We intuit that certain characteristics of the products/goods are assumed by the legislator, being included by the generic term "*characteristics, suitability for use",* being possibly established in the process of interpreting the invoked legal norm. At the moment, a legal interpretation of that content does not exist; likewise, there is no Decision of the Plenary of the Supreme Court of Justice (SCJ) of the Republic of Moldova regarding the examination of criminal cases related to crimes committed in the field of competition.

It is also worth noting that the deed criminalized under letter c) Art. 246[1] of the Criminal Code, causes, as mentioned, damages, first of all, to competing economic agents, causing negative consequences for them, manifested by diverting customers. Without causing damage to competitors, not a single fact of misleading the consumer can be recognized as unfair competition, the criminal liability of the subject, in this case, will intervene for deceiving customers.

In the given case, the damage caused to a competitor can be expressed in the lost/missed profit (taking into account the migration of the clientele to another competitor, respectively, the goods or products of the first one will not be bought to you), in return its business reputation does not suffer, as the unfair economic agent attracts potential customers of his competitors to his products. Moreover, if discrediting has negative consequences for a limited number of competitors, mainly those about whom information has been disseminated, then misleading consumers may cause them to leave an unlimited number of competitors.

The economic agent that misleads consumers can be advantaged both as a result of a single

"action", in the situation where, for example, the economic entity makes a public statement and as a result of a continuous unfair practice. The latter occurs, for example, when false information is placed on the product packaging. In this case, the consumer continues to be misled until the information is changed" [11, p.68-70].

It should be noted that misleading consumers can be expressed by both direct deception, that is, by knowingly providing false information, and by hiding essential information from the consumer or parts of it. In connection with this, for example, M. Zalesskaya rightly notes: "Hiding information in these cases can be not only a violation of consumer rights, but also a manifestation of the act of unfair competition (for example, if a seller in a home appliance ad sells the products of a subsidiary located, for example, in Southeast Asia, and another seller does not mention this, creating the impression that the products of the parent company are being sold. If the prices for products are equal, more consumers will purchase equipment assembled by the "parent" company [12, p.12].

Another important fact, from our point of view, found as a result of the analysis carried out is that both the Competition Law No. 183/2012 and the provision of the rule from Art. 246^1 Criminal Code of the RM does not indicate how many consumers must be misled to recognize the actions of an economic agent as an act of unfair competition. More than that, and in the text of the invoked law, and the provision of the norm mentions the consumer (in the singular, the mention belongs to us, and not the consumers) who is misled. However, we can infer that the legislator had more consumers in mind because he uses the notion of clientele when he prohibits the diversion of the competitor's clientele (the notion of clientele designates the totality or crowd of customers (see above). The same situation is with the competitor (likewise, used in the singular). Therefore, by logical deduction, we will be in the presence of the crime analyzed if the clientele of at least one competitor is diverted, instead, several customers of the competitor in good faith must be misled.

As for the object of misleading the consumer, they are expressly mentioned in the provision of the incrimination rule from Art. 246^1 of the Criminal Code of the Republic of Moldova and represents *the nature, manufacturing method, characteristics, suitability for use or quantity of the competitor's goods,* competition Law No. 183/2012 supplementing the list of objects with *the place of manufacture, the price or the method of calculating the price of the product,* revealing namely *the main characteristics, the use,* identifying it with *the ability to use,* and the notion of '*cargo'* is substituted with that of '*the product'.* The inconsistency of the legislator only reduces the yield and efficiency of the application of the analyzed normative framework.

At the same time, we believe that a certain clarity is necessary regarding the wording of the provision of Art. 246^1 Criminal Code: for example, when "*nature*" is mentioned, nature means goods/products or their nature and manner of manufacture.

We believe that when applying the respective rule, the criminal investigation body should consult the national and international legislation in the field, depending on the goods or products offered to consumers, or the service/work provided by the bona fide competitor, the information that is disseminated (these may be false or untruthful, erroneous or inauthentic, distorted, or totally or partially concealed/concealed) and about which consumers are misled. For example, the EU has certain requirements for food or drink products that are intended to be sold on the EU market, information about them must be essential so that the end consumer can make an informed decision about buying them, and the information must be accurate, visible and easy to understand and not misleading [13].

Likewise, the content of the information provided to consumers can be determined by reference to the legislation of the Republic of Moldova on consumer protection, in this case, paragraph (5) of Art.13 of Law No. 105/2003 which prohibits unfair commercial practices, and according to which "commercial practices deceptive can be deceptive actions or deceptive omissions". Paragraph (6) Art.13 of the invoked law establishes that "A commercial practice is considered to be

misleading if it contains false information or, in any other way, including through general presentation, induces or may induce the average consumer into error and, in any case, causes or is likely to cause the consumer make a trading decision that he would not otherwise have made, even if the information is factually correct with respect to one or more of the following:

a) the existence or nature of the product;

b) the main characteristics of the product, such as: availability, advantages, possible foreseeable risks, manufacturing, composition, accessories, assistance provided after the sale and settlement of complaints, method and date of manufacture or provision, delivery, ability to correspond to the purpose, use, the quantity, the validity period/date of minimum durability or the date of minimum durability/use-by date, the specifications, the geographical or commercial origin, the results that can be obtained from the use, the results and the essential characteristics of the tests or controls carried out on the product;

c) the extent of the merchant's involvement, the motivation of the commercial practice and the nature of the sales process, as well as all statements or all symbols that suggest sponsorship or direct or indirect support given to the merchant or the product;

d) the price or the way of calculating the price or the existence of a specific advantage regarding the price;

e) the need for a service, a separate part, replacement or repair;

f) the nature, competencies and rights of the merchant or his representative, such as: identity and heritage, his qualifications, status, authorization, affiliation or connections, intellectual or commercial property rights or the rewards and distinctions received;

g) the rights of the consumer, including the right to benefit from remediation, replacement or restitution of the value of the product, the inadequate service, the reduction of the price as a result of the termination of the contract under the conditions of Art.20 and 21".

In addition, for most products, there is "special" standard legislation or technical conditions/requirements that must be met by the finished products. Thus, depending on the category, type, etc. of the finished product and the information required for delivery to the consumer will be different, both in terms of content and volume.

Considering how the provision from letter c) Art.246^1 of the Criminal Code of the Republic of Moldova is formulated, we can deduce that the composition of the crime is a formal one, the moment of the consummation of the crime being conditioned by the subject committing the act of *misleading the consumer with a look at the nature, manufacturing method, characteristics, usability or quantity of the competitor's goods.* The same opinion is expressed by the authors S.Brînza and V.Stati who mention that the crime of unfair competition is a formal one, considered to be consummated from the moment of committing the prejudicial action specified in Art.246^1 of the Criminal Code of the Republic of Moldova, in any of its ways [8, p.246].

However, as mentioned before, the purpose of committing actions of unfair competition by misleading the consumer is to divert the competitor's clientele, in other words, to attract the victim's clientele (the bona fide competitor), to induce the consumer to take a trading decision that he would not have taken in another situation (to buy his products, use or benefit from the services he provides, etc.). At the same time, if we start from the objectives of criminal legal protection against unfair competition, it should be recognized that the damage must be caused to both consumers and fair competitors, the latter losing customers will also lose the desired profit, and if we take into account by the market realities, some of the honest competitors can go bankrupt, a fact due to the lack of clientele. We believe that the state, following constitutional principles, must equally defend both the interests of citizens-consumers and those of economic agents against acts of unfair competition, expressed in misleading consumers.

More than that, Law No. 183/2012 on competition, itself provides that the examination procedure of the alleged case of violation of the competition legislation is initiated ~~a)~~ upon the

complaint of a natural person or company affected by the alleged violation of the law. We believe that the enterprise or natural person will be considered affected in cases when it will cause a prejudice (the Index indicates as a synonym the term "*affect*" – to injure, to prejudice), most often of a material (patrimonial) order, but also of image. The diversion of an insignificant part of customers may not affect the enterprise to the extent that the deed meets the degree and prejudicial nature of a crime.

As a conclusion, we will propose reformulating the composition of the crime from Art. 246[1] of the Criminal Code of the Republic of Moldova from a formal one to a material one, linking the consummation of the crime to the moment of causing damage to the competing economic agent in good faith, including consumers, the proposal, including, the arguments in its support constituting the object of study of another subsequent research.

At the same time, to determine the amount of damage as a mandatory feature of the crime component analyzed, we will refer to the provision of Art. 246 of the Criminal Code of the Republic of Moldova, which establishes criminal liability and criminal punishment for limiting free competition. In this case, the legislator conditions the consummation of the crime on "obtaining a profit in particularly large proportions or if damages were caused in particularly large proportions to a third person".

If we start from the position that both monopolistic actions and unfair competition are actions that are comparable in terms of their social danger and similar in economic nature, then it seems logical to condition, in turn, the consummation of the offense of unfair competition by causing damages of a certain degree and character, both to loyal competitors and to consumers, the former also having the latter quality, when they procure goods or products that they use as raw material or component parts for their products or goods.

The subjective side of misleading consumers has always presupposed culpability in the form of intent, which can often be direct. Support for that statement is provided by the very meaning of the expression "to mislead (someone)" which, according to the DEX, means "*to deceive", "to cheat".* In addition, competition implies a rivalry between subjects, the actions carried out by them have a certain conscious and assumed direction, the purpose of competition, including unfair competition, is to unilaterally influence the processes of the consumer market, to effectively limit everyone's possibilities, in fact which implies an awareness and desire to commit the respective actions by the subject of the crime. At the same time, indirect intent is not excluded either, in cases where pursuing the goal of obtaining profits through illegal methods (through acts of unfair competition), the person showed an indifferent attitude towards the consequences that occurred as a result of the spread of information that misled consumers. We consider that the purpose of the crime in the manner analyzed consists, namely, of diverting the competitor's clientele and obtaining an illegal and unjustified profit or competitive advantage.

The subject of the crime of unfair competition in the way of misleading the consumer will be recognized as the responsible natural person who at the time of committing the act has reached the age of 16 or the legal person (except public authorities). However, it is necessary to make some clarifications: the subject of the given crime must be recognized as natural persons who are individual entrepreneurs, or persons who, within an economic agent/enterprise, perform functions related to customer/consumer service, or by the person with management functions of the legal entity (which acted independently or as part of an organ of the legal entity) in whose interest the act of unfair competition was committed by misleading consumers, whether the act was admitted or authorized, or approved, or used by to the authorized person with management functions or the act was committed due to the lack of supervision and control on the part of the authorized person with management functions.

In general conclusions, we will mention the following:

The provision from letter c) of Art. 246[1] of the Criminal Code of the Republic of Moldova was

inspired by a similar provision in Art. 10 bis 3 pt. 3.3 of the Paris Convention for the Protection of Industrial Property prohibits "*indications or statements whose use, in the exercise of trade, are susceptible to mislead the public as to the nature, method of manufacture, characteristics, fitness for use or quantity of the goods*" [14]. Thus, the norm analyzed was formulated by taking some notions and provisions from the national legislation on consumer protection and that dedicated to the regulation of competition, the last normative acts were adopted, including to harmonize national and international legislation.

We believe that the rule from Art. 246^1 of the Criminal Code of the Republic of Moldova is not without shortcomings, a deep revision of the content is necessary, some arguments in this sense were presented in the text above, including the transformation of the composition of the crime from a formal one to a material.

We found that by establishing liability and criminal punishment for unfair competition committed by misleading the consumer, the legislator ensured the legal-criminal protection of both the competing economic agent and the consumer. The damage caused to the competitor is expressed by diverting the clientele, followed by the implicit consequences: loss of profit or a considerable part of it, including, the occurrence of a financial situation likely to lead to the bankruptcy of the competing company, its liquidation, etc. The damage caused to the misled consumer (both natural persons and economic agents) is manifested, for example, by material damage caused as a result of procurement, use, consumption, etc. of inferior products/services that should have cost less, including physical damage to health or bodily integrity, etc. In this way, victims of the crime of unfair competition committed by misleading the consumer are both natural persons-final consumers and economic agents-consumers, involved in competitive competition.

Neither the provisions of the Paris Convention nor the provisions of the competition Law No. 183/2012 mentions that false, inauthentic, erroneous information be disseminated about the goods or products/services *of the competitor*, instead of Art. 246^1 Criminal Code of the Republic of Moldova expressly indicates that the subject induces the consumer is in error regarding ... the competitor's goods. We consider that mention wrong, for the reason that the information given to the bad faith competitor places it on his goods, thus misleading the consumer and causing him to choose and trade in his own favor and to the detriment of the honest/loyal competitor. Only the act of *comparing, for advertising purposes, the goods produced or sold by an economic agent (the bad faith competitor) with the goods of other economic agents (good faith competitors)* can be committed using the goods, the product of another competitor, as a model of comparison.

The subject of the crime of unfair competition committed by misleading consumers is a qualified one, requiring the meeting of certain qualities or special characteristics mentioned by us in the text above.

We believe that the purpose of the crime as a feature of the subjective side is mandatory and consists of diverting the competitor's clientele or obtaining other illegal advantages within the entrepreneurial activity, the reasons being various, for example, profit or greed.

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PERSONS WHO HAVE THE RIGHT TO REFUSE TO GIVE STATEMENTS AS WITNESSES ACCORDING TO ROMANIAN LEGISLATION

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Summary

The purpose of this article is to analyze and understand the regulatory framework regarding the persons who have the right to refuse to give statements as witnesses. According to Romanian legislation, we considered necessary an appropriate analysis of the given theme. We proceed by reviewing the main desired regarding such data, exposed in the jurisprudence of the ECtHR and the Constitutional Court, but also in various scientific works elaborated by authors devoted to the field of criminal procedural law, in order to obtain information necessary to be debated and analyzed in the criminal process, regarding the persons who have the right to refuse to give statements as witnesses, according to Romanian legislation.

Keywords: criminal process, statements, right of refusal, person, witness, liability, punishment.

Introduction. Both the legislation of Romania and that of the Republic of Moldova are applicable to persons who have the right to refuse to give statements as witnesses.

The present study will come up with recommendations based on the analysis of regulatory framework in the field for the promotion of an appropriate social reaction regarding such situations for the persons who have the right to refuse to give statements as witnesses.

Methods and materials applied. Among the methods applied to the study we list the logical, comparative, analytical method. At the same time, the philosophical method is used to develop the study. It was resorted to a systematized and not spontaneous knowledge of the issue regarding the procedure in such situations.

Discussions and results obtained. In accordance with Art. 117 para. (1) of the CPC of Romania, the persons who have the right to refuse to submit statements are the close relatives (the spouse of the suspect or the defendant, the ascendants and descendants in the direct line, as well as their siblings and the persons who had the capacity of the spouse of the suspect or the defendant), being introduced also on people who have established relationships similar to those between spouses or those between parents and children, if they prove that they have cohabited or are cohabiting with the suspect or defendant.

Interesting is the opinion of the fact that only "if they agree, they can testify as witnesses, including providing certain personal data and not only their own, but also that of other parties/ persons, the confidentiality of this data remaining the responsibility of the investigating body criminal" [1, p. 160].

In this sense, the legal framework provided by Art.117 CPC is justified by the need to ensure social protection of these parties, a legislative solution that is unconditional. Thus said, at the individual level the person in the course of a criminal trial receives the assurance that the rule of law is

concerned with his rights to be granted the guarantee against the persons provided for in Art.117 CPC of the rights to choose/not record statements in the case concerned, in order to maintain a level of quality of life.

CPC provides in Art. 117 para.(2) the fact that judicial bodies must communicate to persons who have the right to refuse to be heard as witnesses, the this right not to give statements in this capacity. In the situation where the witness agreed to record the statement, the CPC *does not provide for the existence* of any proof that the witness agreed to record the statement.

In this sense, in the statement it must be expressly mentioned by the witness that he was *constrained* to record the statement and *it is the expression of his/her free will* to give the statement. We propose that these aspects must be introduced in the text of the CPC, in order to avoid abuses by judicial bodies.

Even if the statements of these witnesses are in the interest of the administration of justice, the use of the statements in the criminal trial must be annulled as absolute nullity, due to the unfair and illegal way in which they were taken.

The identification of the statements during the trial, can be done through subsequent checks, the witnesses can be asked if they were made aware of the provisions of Art. 117 CPC at the time of recording the statements, respectively the right to refuse to be heard as a witness, and if *it was the expression of the free will to give such a statement with the consequences arising from it.*

The authors Voicu Ionel Puşcaşu and Cristinel Chigheci [2, p.314] have identified the conclusion of the Court of Appeal of Oradea (see web site: portal.just.ro), of the judge of the preliminary chamber No. 14/CP of 20.03.2015 which exposes a situation similar to the aspects presented, namely that, "regarding the statement given by the witness P.L., the Court held that, indeed, *she was not informed of the right to refuse to give a statement in the case.* It was held that (...) illegally obtained evidence cannot be obtained in the criminal process" [2, p.314]. But, the Court analyzed the situation and presented it regarding the knowledge of the witness P.L. of the right to refuse to be heard. In this regard, "it was held that, subsequently, the witness P.L., called again to give statements in the case, refused to do so, relying on her right to refuse to do so, as a former wife" [2, p.314].

The court assessed that "this circumstance proves that the witness P.L. knew that she had the right to refuse to be heard as a witness, even if this right was not brought to her attention by the criminal investigation bodies, but she did not understand to exercise it, as she later did.

As a result, it was assessed that the statement given as the ex-wife of the defendant P.V., they do not have to be excluded" [2, p.314].

As specified by the Appellate Court in the analysis of the request to cancel the statement of the witness P.L., it did not matter that the criminal investigation body did not inform the witness of her right to refuse to be heard as a witness, analyzing only that the witness would have known when she gave the statement before the criminal investigation body that she could refuse, an aspect on which the Court gives its opinion. In such conditions, another application of Art.117 CPC regarding these situations it is observed.

Under these conditions, it should be mentioned from European jurisprudence, the case of *Unterpertinger v. Austria*, Decision of November 24, 1986 [4], about the witnesses who are part of the family, presented by the authors Georgiana Anghel Tudor, Alina Barbu and Alexandra Mihaela Şinc [3, p.342]: „…When they were summoned by the Regional Court (...) (the applicant's wife, respectively stepdaughter) refused to testify, as they otherwise had the right to do so (...). Consequently, this prevented the judge from hearing them as witnesses and prevented the defense – and the prosecution – from examining them during the oral proceedings. As a result, the provision is not clearly incompatible with Art. 6 para. 1 and para. 2 letter d) ECHR: it takes into account the special problems that could be generated by a confrontation between someone accused of a crime and a witness from his own family and is intended to protect such a witness by avoiding placing him in a moral dilemma" [3, p.342].

Studying the case of *Unterpertinger v. Austria* [4], the witnesses (wife and stepdaughter)

gave evidence against the accused at an earlier stage of the proceedings, but refused to testify before the National Court. The accused was convicted for causing injuries to his adopted daughter and wife. His wife and daughter had been questioned by the gendarmerie, the first in relation to the two incidents, the second only in relation to the first. At the hearing before the Regional Court, they declared that they did not want to testify, so that neither the court nor, later, the Court of Appeal could interrogate them.

In the sense of what was found, it was specified „Art. 152 § 1 par. 1 of the Criminal Procedure Code, which authorizes the petitioner's family members to refuse any deposition, does not manifestly infringe Art. 6 para. 1 and 3 letter d) as such. Regarding the reading at the hearing of the statements made to the gendarmerie, she could not consider them incompatible with the aforementioned provisions. However, their use as evidence must take place in compliance with the rights of the defense. This is the case, especially when the accused did not have, at any stage of the previous proceedings, the opportunity to ask questions of the persons whose statements are read at the hearing. In essence, the Court of Appeal based its conviction of Unterpertinger on the statements of his wife and stepdaughter given by them to the gendarmerie, which were not considered as simple information, but as evidence of the accuracy of the accusations that those in question had brought during that period. Considering that the petitioner was declared guilty on the basis of the testimonies in front of which the rights of the defense were significantly reduced, there was a violation of paragraph 1 of Art.6, combined with the principles inherent in paragraph 3 letter d)" [4].

The situations to be analyzed are those created by conflicts between family members, when they occur. In this sense, the Decision of the Court of Appeal No. 1469 of October 17, 2016 [5] was based on eyewitnesses and not on the testimonies of the persons provided for in Art. 117 of the CPC, specifying that in the criminal process "the quality of relatives or friendship of the witnesses heard in the case is not relevant, i.e. there is no prohibition, because the quality of witness is any person who has knowledge of facts or factual circumstances that constitute evidence in the criminal case, with only a few exceptions regarding persons who have the right to refuse to give statements as witnesses" [5].

In the jurisprudence of the Constitutional Court, Decision No. 562 of September 19, 2017 [6], also refers to the way of regulating the right not to testify. In this sense, the Court notes that "the legislator, according to his constitutional powers, provided for in Art. 61 paragraph (1) of the Constitution, and within the margin of appreciation conferred by them, can subject this right to certain conditions and formalities, but the different regulation of this right for people who are in similar legal situations is discriminatory, if it does not have an objective and reasonable justification, if it does not have a legitimate purpose or if there is no proportionality between the means used and the purpose pursued by the legislator through the analyzed regulation.

With regard to the incidence of Art.16 paragraph (1) of the Constitution, the constitutional review court, ruled that the principle of equality of rights requires the establishment of equal treatment for situations which, depending on the purpose pursued, are not different. Consequently, a different treatment cannot only be the expression of the legislator's exclusive appreciation, but must be justified rationally, in compliance with the principle of equality of citizens before the law and public authorities. Also, according to the constant jurisprudence of the Constitutional Court, the situations in which certain categories of people find themselves must differ in essence in order to justify the difference in legal treatment, and this difference in treatment must be based on an objective and rational criterion" [6].

It also provides that "the exception established by the law is a relative one, so that the mentioned persons cannot be obliged to give statements as witnesses, but they have the faculty to give such statements, renouncing the right conferred by Art.117 of the Criminal Procedure Code.

According to the doctrine, the reason for the right to refrain from statements, in the case of the persons listed in Art.117 (...) of the CPC, consists in offering the witness an option to avoid one of the following situations – either to tell the truth at the risk of jeopardizing family life, or not tell-

ing the truth in order to protect family life, but at the risk of being convicted of perjury. Therefore, through these regulations, the legislator sought to protect the feelings of affection that the husband, ex-husband, ascendants or descendants, brothers and sisters of the suspect or defendant may have towards the latter" [6].

In Decision No. 175 of March 24, 2022 [7], the Court provides an exception to the general rule and explains that "in the situation of raising a minor by the partner of the natural parent (important being the relationships of growth and education, with a long and permanent character, and not the source of these relationships, a broad notion that includes the maintenance of the minor and his education), feelings of affection and gratitude are born, which put the persons involved in such a relationship in a situation similar to the relationship between ascendants and descendants in a direct line. He also notes that, being faced with the obligation to testify, these people are faced with a dilemma: either to tell the truth, which may endanger the relationship established with the parent, respectively with the stepchild, or to hide the truth, to favor the parent or the stepchild, with the risk of being exposed to criminal liability for committing the crime of perjury" [7].

Conclusions. The text of Art. 117, para. (1) of the CPC regulates the scope of persons who have the right to refuse to give statements as witnesses.

In this sense, to the aspects presented in Art. 117 CPC, there must be obligations on the part of judicial bodies to inform these persons of the right not to give statements as witnesses.

These obligations cannot be respected by the judicial bodies, except only by introducing in the CPC the recording of this right in declarations.

In the case of consent to give the statement, there must also be a belief that it was in accordance with the free will of the witness.

As ferenda law proposals, we propose to amend Art. 117 para. (2) CPC, with the following wording: "*After fulfilling the provisions of Art. 119, the judicial bodies communicate to the persons referred to in par. (1) the right not to give statements as a witness. The refusal is recorded by drawing up a report. In the case of acceptance, drawing up a minutes or recording in a statement the expression of free will regarding the consent of the witness*".

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INTERNATIONAL AND NATIONAL TRENDS IN THE APPLICATION OF IMPRISONMENT TO WOMEN

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Summary

Women represent a particularly vulnerable subject of criminal justice, especially because they are victims of sexual and physical violence or suffer from mental illness, depend on alcohol or drugs, come from socially vulnerable segments of the population. These women are socially and economically marginalized and often become victims of abuse by family members or people close to them, victims of sexual and/or physical violence that forces them to commit crimes. Women could become addicted to alcohol or narcotic substances. Recently, global trends indicated an increase in the number of women sentenced to imprisonment. The opposite trend is present in the Republic of Moldova. In the last 5 years, there is a trend in reducing the number of women sentenced to the deprivation of liberty and held in Prison 7 Ruska. In this study, we analyze global tendencies in the women's detention domain, the number of women sentenced to imprisonment in the Republic of Moldova in 2018-2023, the severity of crimes committed and the psychological profile of female prisoners. We determined the trends present within the framework of national justice system and the main problems faced by women deprived of their liberty.

Keywords: human rights, penitentiary system, female prisoners, crimes, psychological profile.

Introduction. Female crime remains a complex phenomenon in all countries of the world. Due to poor social, economic, and financial conditions, the number of women who commit crimes and are sentenced to imprisonment is increasing. Statistics show that the number of women in prison increased by around 60% between 2000 and 2022. In the Republic of Moldova, on the contrary, the number of women deprived of their liberty is decreasing, which shows a positive trend in the application of non-custodial sanctions and a decrease in the number of serious, extremely serious, and exceptionally serious crimes committed by women. In addition, women are a vulnerable category of subjects in the criminal justice system, due to the presence of victimization, abuse of toxic, narcotic and psychotropic substances, and emotional instability caused by being victims of sexual, physical, and psychological violence. The increased vulnerability of female detainees makes it necessary to analyze their psychological profile, the problems they face in the prison system and the possibility of improving the level of respect for their rights.

Methods and materials applied. In this research, we have applied to the fundamental methods of legal investigation, such as the logical method, which is generally based on the logical interpretation of statistical data on women's detention in the world in general and in the Republic of Moldova in particular. We used the deductive method, establishing the problems faced by women prisoners in the prison system of the Republic of Moldova. We applied the statistical method, to

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determine the evolution of the number of women prisoners in the last 5 years and the seriousness of the crimes committed by them. We used the comparative method to determine the evolution of global trends in women's imprisonment in different countries of the world.

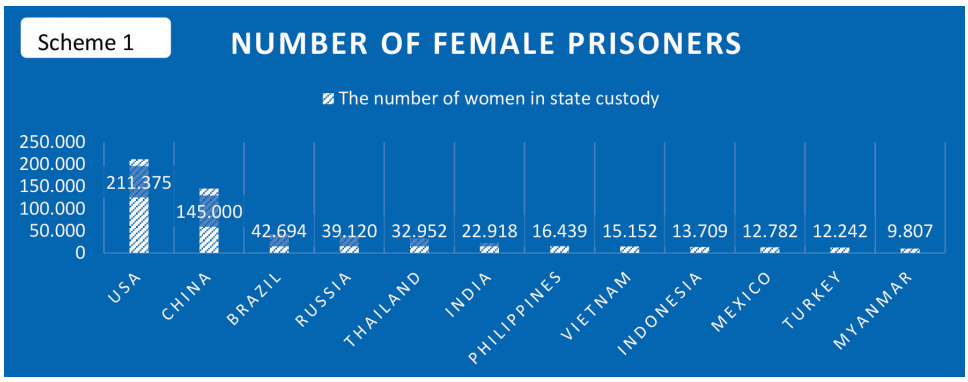
Global trends in women's imprisonment

Table 1 Number of women in detention in some countries

SUA	211,375
China	145,000
Brasilia	42,694
Russia	39,120
Thailand	32,952
India	22,918
Philippines	16,439
Vietnam	15,152
Indonesia	13,709
Mexico	12,782
Turkey	12,242
Myanmar	9,807
Total number of detainees in these countries	574 188
Other countries	165 812

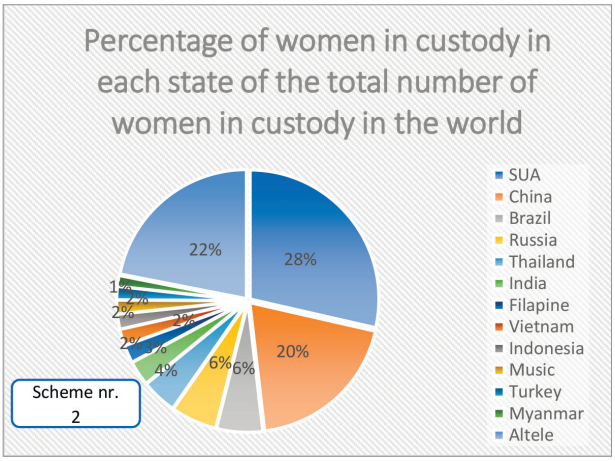
According to statistics presented by researchers Helen Fair and Roy Walmsley on 19 October 2022 [1] the number of women in prison worldwide has increased by almost 60% compared to statistics from 2000. At the same time, the number of male prisoners has increased by about 22% [2]. More than 740,000 women and girls are detained in prison institutions around the world, either in pre-trial detention or sentenced to imprisonment. Data on the number of prisoners in China is incomplete and information on the detention of women in five countries around the world is missing, which allows us to conclude that the total number of women prisoners is higher [1]. Women and girls make up 6.9% of the world's prison population. In African countries, the proportion of female prisoners is 3.3%, compared to 5.9% in Europe, 6.7% in Oceania, 7.2% in Asia and 8.0% in the USA. In 17 jurisdictions around the world, women and girls make up more than 10% of the prison population, including Hong Kong-China (19.7%), Qatar (14.7%), Macao-China (14.1%), Laos (13.7%), Myanmar (12.3%), Vietnam (12.1%), Brunei Darussalam (11.9%), United Arab Emirates (11.7%), Thailand (11.5%) and Guatemala (11.3%) [1].

More than 200,000 women (approximately 211,375) are held in the United States. Other countries with the highest number of female detainees are: China – 145,000 plus an unknown number of women and girls in pre-trial and administrative detention, Brazil – 42,694 female detainees, Russia with approximately 39,120 and Thailand with 32,952 detainees [2]. (Scheme No. 1; Table No. 1).



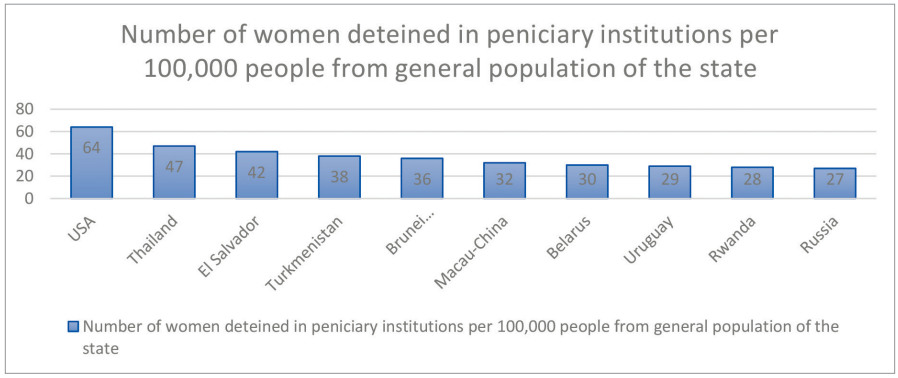
The highest percentages of women prisoners, 28% and 20%, are held in the USA and China, which highlights the disproportionality of women's imprisonment in these countries, the discriminatory nature of criminal justice and the danger of women's rights being violated in detention. (Scheme 2) The states with the highest percentage of women in prison (excluding very small jurisdictions)

include Hong Kong-China (19.7%), Qatar (14.7%), Macao-China (14.1%), Laos (13.7%), Myanmar (12.3%), Vietnam (12.1%), Brunei Darussalam (11.9%) and the United Arab Emirates (11.7%) [2]. We consider it appropriate to point out that the countries with the highest percentage of women in prison are in the regions of China, a state with a totalitarian political regime, which underlines the lack of real protection for women detained in this state.



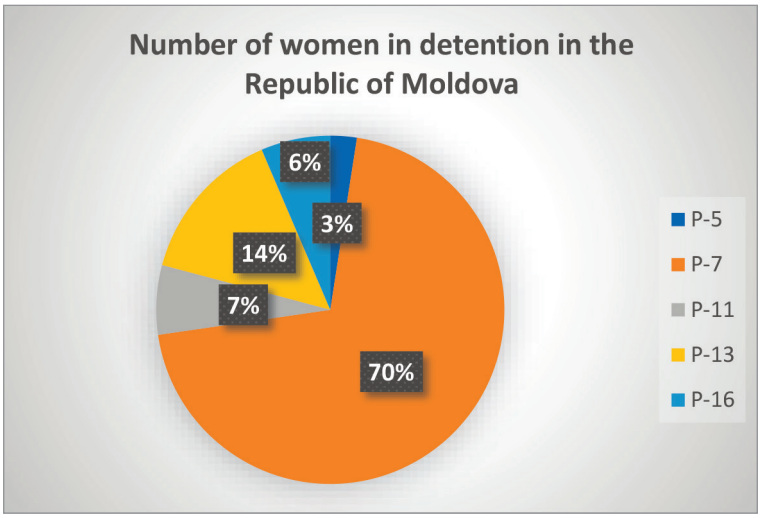
From this data, we can conclude that 78% of the total number of women is held in 12 countries of the world. The study did not analyse 5 countries, including Cuba, Eritrea, North Korea, Somalia and Uzbekistan out of 193 UN member states. Therefore, only 22% of the world's imprisoned women are held in 176 countries. These data show a disproportionate nature of women's imprisonment in some countries, which can be interpreted as discrimination against women in criminal justice. The large number of women in detention is registred in countries such as the USA, China, Russia and Turkey, combined with the poor conditions of detention reported by international bodies, highlight the increased vulnerability of women in places of detention, the need to adapt detention conditions to the profile of women detainees and to respect the rights of this category of persons. (Scheme 2)

Another statistic that should be mentioned is the number of women prisoners per 100,000 of the state's population. (Scheme 3) The countries with the highest rate of female prison population, calculated as a proportion of the number of female prisoners per 100 000 persons of the state population, are the USA (64), Thailand (47), El Salvador (42), Turkmenistan (38), Brunei Darussalam (36) [2], Macao-China (32), Belarus (30), Uruguay (29), Rwanda (28) and Russia (27) [1]. The highest rates of female imprisonment per 100,000 of the state's population are found in the countries with the highest number of female detainees, namely the USA, Belarus and Russia.



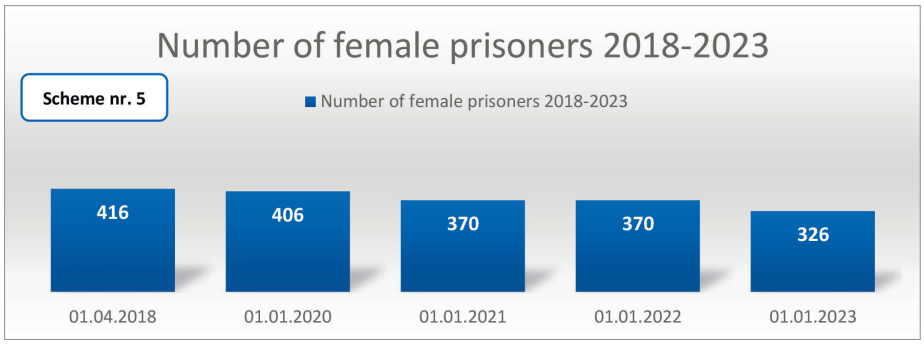
Reflecting on contemporary trends in the field, we note that in both Asia and Oceania, the total number of female employees has doubled since 2000. In contrast, Europe has seen a decrease (by 13%) in the female prison population [2]. The number of women and girls in detention worldwide has increased by almost 60% since 2000, when the total number was estimated at around 466,000. For the same period the number of male prisoners has increased by about 22%. These trends have to be seen in relation to an overall population increase (according to United Nations statistics presented by country) of around 30%. The total number of detained women in Asia has doubled since 2000 and the overall population has increased by 26%. In Oceania and the USA, the increase in the number of female detainees has exceeded the overall population growth. In Africa, the number of female prisoners has grown slower than the overall population. In Europe,

there is a decrease (by 13%) in the number of female detainees, along with a slight increase in the overall population. Excluding Russian prison statistics, the number of female offenders in European prisons has increased by around 8%, compared to an overall population increase of less than 6% [1]. Therefore, the greatest increase in the number of female detainees is in continents such as Asia and Oceania, which is an alarming trend, requiring urgent state intervention to develop policies focused on the prevention of female criminality and the introduction and wider application of non-custodial sentences to reduce the number of female detainees. In Europe, on the other hand, the number of women in prison is falling thanks to balanced penal policy and the application of alternative sentences.



Analyzing the number of women detained in Moldova and the trends in the application of deprivation of liberty as a criminal sanction against women, we would like to point out that at present in penitentiary institutions such as: Penitentiary 5 of Cahul (isolation for criminal prosecution), Penitentiary 7 of Rusca, Penitentiary 11 of Balti (isolation for criminal prosecution), Penitentiary 13 (isolation for criminal prosecution), Penitentiary 16 Pruncul (penitentiary hospital) there are 326 women, which represents 5.36% of the total number of detainees in the penitentiary system, which is currently 6084 persons, which is lower than the European average of 5.9%. The majority of women are sentenced to deprivation of liberty, i.e. 229 female inmates are imprisoned in Penitentiary 7 Rusca. Another 77 women are held in pre-trial detention isolators. One female minor is in detention in Penitentiary 7 Rusca [3; 4; 5; 6; 7; 8; 9; 10] Therefore, out of the total number of women in detention 70% are serving a custodial sentence and 30% are in pre-trial detention. (Scheme 4)

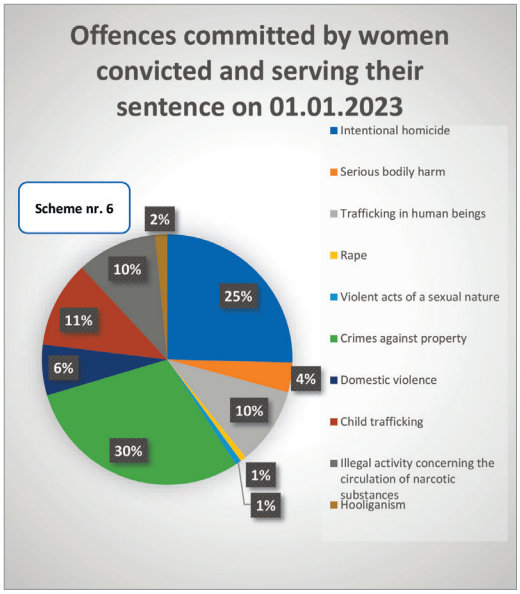
We consider opportune to determine the evolution of the number of women detainees in the prison system. Analyzing the number of women detained in the Republic of Moldova in 2018, we find a positive trend of decreasing the number of women placed in places of detention by 21.63% (Scheme 5). This shows, on the one hand, a decrease in female crime rates and, on the other hand, the application of non-custodial sanctions such as a fine, unpaid community service or release from criminal liability for women. These positive trends contribute to the discharge of the prison system, the reintegration of women offenders into the community and have a positive impact on their families, as women are able to raise their children and engage in employment.



The seriousness of offences for which women are sentenced to deprivation of liberty is an-

other important indicator in the analysis of female criminality and current trends in women's imprisonment. Women prisoners are convicted of less serious, serious, particularly serious and exceptionally serious offences. A positive aspect, which has developed in the practice of national courts, is the non-application of custodial sentences to women for the commission of minor offences. The seriousness of the offences determines that the majority of women are sentenced to deprivation of liberty for 5 to 10 years and 10 to 15 years. As far as possible, therefore, the use of custodial sentences for women is avoided, and is used as a last resort for serious, particularly and exceptionally serious offences.

The main crimes committed by women include: intentional homicide, intentional serious injury to body or health, trafficking of human beings, property crimes, domestic violence, child trafficking and illegal drug trafficking. We note the specificity of crimes committed by women. These are either limited to the application of violence, which, as a rule, is directed against the husband or cohabitant by the female victim of domestic violence, or are focused on the need to accumulate income, being determined by the impossibility of employment with a stable salary, the situation being aggravated by the economic crisis in the country. In this context, we note that 30% of crimes committed are property crimes, the occurrence of which is determined by the need to accumulate financial sources to support themselves, as women are determined to commit this type of crime because of their difficult financial situation. A large proportion of crimes committed by women are non-violent, which makes this type of crime less dangerous for public safety (Scheme 6).



In another perspective, we consider opportune to mention the reasons for the increase in female criminality. The causes of female delinquency include financial and material difficulties, lack of general or specialised education, unemployment, domestic violence, lack of a stable place to live, alcohol or narcotic substance abuse, dependence on a spouse/cohabitant/partner, family obligations to support children, marginality and infantilism. These factors have a more severe impact on women than on men [11, p.45-53]. The increase in female criminality is also caused by the economic crisis, the impossibility of finding a stable job, the negative impact caused by the group to which they belong, women coming from socially vulnerable, single-parent families with unstable incomes.

In addition, women more often than men become primary guardians of children, and the stress and responsibility for raising and supporting their families, living in poverty, can lead to involvement in criminal activity [12]. Other causes of the increase in female criminality include discriminatory legislation, lack of economic, social and cultural rights, and restrictions on access to justice. These circumstances increase the likelihood of women being convicted. For example, women offenders often do not have sufficient financial resources to pay for legal aid, fines or bail [11, p.45-53]. All these circumstances lead to increased vulnerability of women in prison, their emotional instability, problems with maintaining contact with family and children, as well as difficulties in their rehabilitation.

Profile of female detainees. Women in detention are particularly vulnerable because they are part of socially vulnerable sections of the population, victims of sexual and physical violence or suffering from mental illness [2], addicted to alcohol or drugs [13, p.2]. These women are socially and economically marginalized and often become victims of abuse by family members or close

persons, being victims of sexual and/or physical violence, which leads them to commit crimes, become addicted to alcohol or narcotic substances [14, p.52].

The presence of family relationships is a factor, which prevents deviant behavior and, on the contrary, the couple relationships of female offenders are characterized by abuse, physical and sexual exploitation, which leads to substance abuse and related criminal activity. Women detainees mention personal relationships as the cause of their pain and invoke the use of narcotic substances as medicine to alleviate psychological distress [14, p.52]. The rates of female victims of domestic violence are very high. Between 1/3 and 2/3 of them have been mentally or sexually abused before deprivation of liberty [15, p.525]. The presence of domestic violence causes strong fear for their own lives and those of their children [16; 17; 18]. Therefore, the increased vulnerability of women in detention is dictated, on the one hand, by the presence of the phenomenon of victimization, psychological trauma caused by the domestic violence, childhood violence, women being grown up in single-parent families, socially vulnerable, as well as growing up their children without the help of their husband or partner.

The psychological state of women is aggravated by the fact that they are often single parent, most of them have dependent children; they are less likely to repeat offences. When women are single parents, their children are more likely to end up in children's homes compared to male prisoners [15, p.525]. In this case, the deprivation of women's liberty has a negative impact on the community in general and on their families and children in particular, which makes it necessary to apply non-custodial measures to this category of people. In addition, the application of custodial sanctions causes immense psychological stress for children, who are separated from the only person who cares for them. In this situation, psychological contact between mother and child is broken, making it difficult or practically impossible to maintain a healthy connection and relationship between the woman deprived of her liberty and her child, which affects the psychological state of the woman in detention.

If there is only one women's penitentiary in the state, this results in the detention of several categories of women together, and geographic isolation, being strongly away from home means fewer visits and more abandonment [15, p.525]. The geographical location of the women's prison determines the difficulties in maintaining contact with family and close relatives, the impossibility for women to maintain the emotional connection necessary for further reintegration into the community, as well as the lack of moral, emotional and, last but not least, material support. The lack of presence of the criminal subculture developed in women's prisons is dictated specifically by the lack of financial means among the women detainees, the lack of parcels and support from their families. These aspects lead to the emotional isolation of women in detention, the impossibility of overcoming psychological trauma and the presence of antisocial or deviant behaviour. Taking into account that women often have dependent children, social isolation is a very difficult problem from the women's point of view [15, p.525].

In addition, based on the small number of women in detention and the non-adaptation of places of detention for their specific needs, there are very few medical, educational, and professional programs that address the necessities of women being created for male prisoners [15, p.525]. The lack of resocialization programs complicates the reintegration of women and the overcoming of psychological trauma and does not contribute to their ability to deal with personal problems. In practice, few numbers of the programs available in women's prisons have a true impact on their personality, most of the programs being characterized as formal. Detainees are given the rating "unsatisfactory" instead of adapting the programs to the particular needs of women in detention, which determines the inefficiency of the respective programs, the non-implementation of programs focused on monitoring the personal progress of each detainee, the distrust of women in keeping confidentiality by the psychologist, who is the collaborator of the penitentiary institution. In this case, the provision of psychological and medical assistance is influenced by the lack

of functional independence of the medical staff from the collaborators, who ensures order and security in the penitentiary institution. These aspects determine the unwillingness of women in detention to discuss personal problems with a psychologist and the difficulties in resocialization after serving the custodial sentence.

The main problems faced by female detainees in the penitentiary system in the Republic of Moldova are: 1) lack of psychological, psychiatric, social assistance programs necessary for the social reintegration of women deprived of liberty and adapted to their specific needs and 2) frequent and disproportionate application of physical force and special means to women in detention.

In order to guarantee the full respect of the rights of women detainees, it is necessary to develop the complex strategy focused on: 1) implementation of the concept of dynamic security and changing the relationship between staff and detainees; 2) implementation of conflict prevention measures; 3) training of psychologists in special courses, which deal with psychological assistance to people with deviant behavior; 4) ensuring the functional independence of psychologists and regulating the obligation to maintain the confidentiality of discussions with patients; 5) transferring psychologists and doctors from the National Administration of Penitentiaries to the Ministry of Health; 6) training employees in the management of conflict situations, psychological techniques of "unloading" the situation and those of conflict resolution by non-violent methods, 7) adopting the gender-based approach and adapting the process of execution of custodial sentences to the needs of women, who are part of at-risk groups, 8) providing qualified psychological assistance throughout women's stay in prison, focused on removing the causes of aggression and resolving psychological problems in the family, 9) supporting prisoners' contacts with families and children, in particular by providing short- and long-term visits.

Conclusions. Women are a vulnerable category of subjects in the criminal justice system that requires increased attention. The high rates of female criminality and custodial sentences for this category of persons highlight, on the one hand, the need to develop social, psychological, psychiatric and reproductive assistance programmes focused on the needs of women and, on the other hand, the acute lack of female crime prevention programmes in several countries and the non-application of alternative or non-custodial sanctions.

Only in Europe today it is possible to observe a decrease in the number of women sentenced to custodial sentences, which shows the effectiveness of the penal policy adapted by the states, the application of non-custodial sanctions to this category of persons and the relatively low number of serious crimes committed by women. In the Republic of Moldova, there is a trend towards a reduction in the number of female prisoners in the penitentiary system due to the application of alternative sanctions and the application of custodial sentences only for serious, particularly serious and exceptionally serious offences. The psychological profile of women is characterized by emotional instability, the presence of victimisation, a history of drug, alcohol, narcotic and toxic substance abuse. These aspects make it necessary to develop psychological, psychiatric, social and reproductive assistance programmes adapted to the needs of women deprived of their liberty in order to ensure their reintegration into the social environment and prevent recidivism. Complex actions must be implemented in order to guarantee full respect for the rights of women prisoners and their social reintegration.

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VICTIM'S INTERACTION WITH THE CRIMINAL JUSTICE SYSTEM: REPUBLIC OF MOLDOVA, CANADA AND UNITED STATES OF AMERICA – COMPARATIVE ANALYSES

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Summary

The efficiency of the criminal justice system in a state can be assessed by analyzing the level in which the standards postulated by international human rights legislation are respected. In Republic of Moldova, measures were taken to respect the rights of criminals, namely through: ensuring a legal framework of procedural rights that correspond to the stipulations of international law, improving detention conditions and significantly taming the executional-penal law.

Unfortunately, the legislative body of the Republic of Moldova has not been as productive and dynamic regarding the victims. In our country, the current legal framework for the protection of crime victims makes the victim's experience in their interaction with the criminal justice system quite unpleasant. A state that prioritizes the needs of the offender and does not take into account the needs of the victims cannot be considered truly democratic, but above all, it cannot be considered a state that provides an adequate level of criminological security to its citizens.

Based on this fact, we performed a comparative analysis of the interaction of victims with the criminal justice system in 3 distinct countries: Republic of Moldova, Canada and United States of America, in order to identify the good practices that our country could import from the West. Canada can be considered a „victim's paradise" due to the fact that it responds to the needs of victims in a thorough and extensive way, being a good example of respect for human rights.

Keywords: victim, support services, victimological assistance, victim therapy, criminal justice, victimological policy.

Introduction. Republic of Moldova has a fairly vague legislative repertoire regarding the protection of crime victims both during the criminal process and post-process. It follows that the organizational framework for providing victimological assistance is not exactly efficient. On the other hand, victimological assistance involves providing victims with support services that not only have the ability to mitigate the consequences of the crime committed on them, but also to mitigate for the future those victim personality traits that constitute victim-criminogenic factors, offering also a relative victimological prevention of crime, and a certain improvement of victim deviance.

A. Şavga notes that „it is generally recognized that for the removal of damages caused by the commission of the crime, only a simple intervention of the criminal law and criminal justice bodies are not enough, and the establishment of a system of protection measures for victims is imperative, as well as the measures to protect their legal rights and interests" [1]. Unfortunately, the interests of the victims are ignored in the criminal process, the implementation of criminal law being reduced to the incarceration of the criminal and the moral satisfaction of the victim resulting from this, a fact that indicates a serious backwardness, a limited capacity for critical thinking, because the victim remains in the latter to face his own traumas and only in rare cases demon-

strates an adequate level of information to seek victimological assistance through „the support services" stipulated by law [2].

In addition, the amount of assistance stipulated by law does not correspond to the modest minimum required, especially when we refer to the dangerous cases of victimization, which happened in brutal forms. The law stipulates that at the first contact with the criminal justice system a victim must be informed about the support services that she can benefit and about her procedural rights, but only an insignificant number of victims know and request assistance from the state. The causes of this state of affairs are reflected in the following theses:

Some victims, not having legal education, are formally informed about support services and their procedural rights. But they are not able to understand their purpose and do not try to get more information;

Some victims simply do not trust the collaborators of law enforcement bodies and the providers of support services, as a consequence of the trauma obtained as a result of the victimization, as well as the result of the bad reputation that this professional group has in society;

The support services that can be offered according to the law are not integrated, being dissociated from each other, thus, the victim realizing that she enters in a too bureaucratic system, and she gives up. The solution would be to create a more coherent victimological service, which could offer multidisciplinary and integrated support services, based on an individualized rehabilitation plan.

In the current situation of the Republic of Moldova, we believe that a more effective victimological service focused on providing integrated victimological assistance, through centers that are not significantly dissociated from each other, can be created and organized only within the Police service. First of all, because in all Police Inspectorates there are already a certain number of employees who have criminological experience that can be used to rehabilitate the victims, not just to investigate and discover crimes and criminals in order to bring them to justice. Secondly, police officers can facilitate, through mediation, victims' access to a fairly wide range of support services provided by civil and non-governmental structures, which they can involve in the efforts to rehabilitate people victimized by criminal means in the most diverse ways (physical aggression, rape, robbery, etc.). In its interaction with the criminal justice system, the Police is the first organ of the state with which the victim contacts, therefore the first agent who can carry out a detailed anamnesis of victimization experiences, an analysis of the needs and risks to which the victim is subjected, and consequently, the first agent who can design an individual rehabilitation plan.

Unfortunately, victimological assistance is currently at the mercy of civil and non-governmental structures, being given mainly by employees who have no criminological competence and especially victimological competence. They not having a narrow specialization, namely in victimology and victim therapy, cannot offer complex assistance. In addition, we have in that field a small number of public associations, capable of providing assistance to an insignificant number of victims or only to certain categories of victims, and in the public administration related to the respective field, activate employees which are quite poorly qualified and absolutely unmotivated.

It is not a negative fact that the victimological service is at the mercy of non-governmental structures. There are states that have a very positive experience in this regard. But, in such states, non-governmental structures operate efficiently only due to the following circumstances:

– They have a good funding and recognition of the results obtained from the state, which stimulates their activity by awarding different honors;

– The state offers them not only funding but also concrete tasks in the development of criminal policy;

– Such structures are stimulated to carry out scientific work and pioneering work (the first therapeutic communities, pro bono clinics, etc.);

– Non-governmental structures are also co-opted to use the experience and the results of

their research in the development of university educational programs that aim to train specialists who will work in the Police, in victimological assistance or in the field of resocialization of criminals, increasing the level of competence of the agents who ensure the state's anti-crime activity;

– Victimological assistance programs are, until the last stage of implementation, monitored by the state structures that provide them with funding.

This level of collaboration between state authorities and non-governmental structures in providing victimological assistance is specific to Western societies. The primitivism of the victimological service in the Republic of Moldova becomes even more visible through its comparative analysis with the services that exist in some countries of the European Union, but especially with United States of America. Why do we think that the primary role in improving the victimological service, or in other words, the legal and organizational framework of victimological assistance, in the case of the Republic of Moldova, should be played by the state authorities and not by non-governmental structures if they are extraordinarily successful in the West? The answer to this question is a very simple one: because in Moldova many public associations, or NGO as they were once called, are designed to be „fund-eaters", but not to carry out an activity in the public interest. In other words, it's a matter of culture and mentality, because some people create legal entities with a non-commercial purpose to make a profit, taking advantage of the fact that only in rare cases, a winning project that has attracted certain grants is scrutinized until the last stage of implementation. As a rule, in many projects for which public associations have received funding, the outlined tasks are carried out formally, partially, rudimentarily and less with everything that was planned.

In the case of the United States of America, non-governmental structures do not provide any legal support, they operate for informational purposes only and do not even provide referrals for legal or other services directly. However, these structures favor, especially through their information activity, victim's access to legal remedies. Among the most important organizations that are active at the federal level on behalf of victims in the United States of America are: The National Crime Victim Law Institute [3], National Crime Victim Bar Association [4], National Center for Victims of Crime [5], and National Organization for Victim Assistance [6].

There are also smaller organizations that campaign and act for the benefit of certain categories of victims (victims of sexual assault, human trafficking victims): Rape, Abuse and Incest National Network; International Alliance for Hope; Victim Support Services; Safe Horizont; The National Coalition Against Domestic Violence; ChildHelp; Mothers Against Drunk Driving; The National Network to End Domestic Violence; Parents of Murdered Children; The Innocence Project; Women Empowered Against Violence, etc. [7]. Many of these organizations have more than 40 years of experience in the field of victimological assistance, they have solid funding from the state, especially from the US Department of Justice, within which there is also a federal office for crime victims (Office for Victims of Crime) [8], office through which the Department of Justice manages and funds various justice programs (The Office of Justice Programs) [9].

Particularly interesting and effective is the Canadian experience of providing victimological assistance, which also involves a harmonious combination of the work of governmental (federal and provincial) and non-governmental structures. The great advantage and strength of the way in which victimological service is organized in Canada is the fact that there is an Office of the Federal Ombudsperson for Victims of Crime [10]. His competence includes not only working directly with victims but also participating in the development of criminal policy through recommendations, observing certain errors or negative trends (at the level of the law, of the implementation of the law or even at the level of society) that can reflect on the victims, etc. Victimological assistance in Canada is given, from our point of view, at an even higher level than in the USA, the Canadian victimological service presenting several advantages, good to be implemented in our country as well, which will be revealed in the following.

Canada uses the work of volunteers and non-governmental structures, providing them with

training in working with victims. The intervention of volunteers and non-governmental structures can be manifested: a) through direct work with the victims; b) by collecting funds; and c) by providing administrative aid. Volunteers and non-governmental structures are not involved in criminal research and policy making, as in the USA. A good number of organizations that use the services of volunteers provide them with training in victim assistance [11].

In Canada, the victimological service and the correctional service correlate their activity, but more to the advantage of the victim: the victim is notified, after submitting a form with all the decisions related to the aggressor, including the granting of the right to travel outside the penitentiary, the conditional release etc. Also, the victim has the right to obtain information related to the aggressor's progression in behavioral correction and can participate by expressing the opinion in the court process regarding conditional release, both directly, in which case the travel and accommodation expenses in the locality where the court is located are provided by state, as well as mediated, having the possibility to present the statement in court in writing, or in audio-video format. In both cases, the victim fills out a request-form [12].

According to Canadian Law, the victim of the crime must be treated with compassion, fairness and respect, and in order for this to be achieved, the following rights are stipulated and respected through the „Canadian Victims Bill of Rights Act": a) the right to information; b) the right to protection; c) the right to participate; d) the right to seek restitution. These rights are respected during the 4 successive procedural stages: a) the crime investigation stage; b) the stage of the court process (trial); c) the sentencing stage; d) the execution-penal stage and conditional release.

In Canada, within the victimological service, there is a structure created for the implementation of the federal strategy for victim protection and the improvement of policies in the field of victimological assistance – the Policy Center for Victim Issues [13].

In other states, such as Republic of Moldova, the victimological service is a diffuse subsystem within the criminal justice system, but parasitically and illogically infiltrated into other social subsystems, which regulate itself, and this is why good practices are more difficult to adopt and implement. In Canada, this subsystem is regulated in a directed manner – through a high level of inter-institutional coordination and under the auspices of a structure capable to observe negative trends that can be ameliorated and in this sense, develop measures to be discussed at the level of criminal policy of the state (federal). The Policy Center for Victim Issues works to improve the experience of victims in the criminal justice system by ensuring that victims of crime and their families are aware of their role in the criminal justice system and of the services and support available for them. The Center also aims to raise the awareness of justice employees, allied professionals and the public about the needs of crime victims.

Canada is a country that provides financial support for people victimized abroad, one of the few countries in the world that has a separate fund for such cases. The types of crimes eligible for emergency financial assistance are: murder, sexual assault, aggravated robbery, assault with serious personal violence, including against a child. The victim downloads an application-form from an online platform, which she then fills out and submits also online in order to benefit from this support [14]. This support is not a form of material compensation, it is only support for the victim's urgent financial needs. The fund for persons victimized abroad can help cover the following expenses, in case the victim has no other source of financial assistance: a) travel expenses for returning to the country where the crime occurred in order to participate in the preliminary meeting and/or trial or equivalent process; b) travel expenses for returning to the country where the crime occurred to attend the preliminary hearing and/or trial, if the host country is unwilling or unable to pay; c) travel expenses for a support person to be with a victimized Canadian abroad in the period immediately following the crime; d) expenses for a Canadian victim of a crime to return to Canada.

The fund can also help cover the following types of expenses if the victim has no other

source of financial assistance: a) hospital and medical expenses due to victimization; b) expenses for replacing stolen official documents; c) upon return to Canada, financial assistance for professional counseling; d) funeral expenses if the crime resulted with the death of the victim (includes funeral and burial expenses, but does not include expenses for flowers, reception, etc.). Canadians are also eligible to receive consular services outside of Canada through Global Affairs Canada. There are also expenses that are not covered by the respective fund: a) expenses covered by the applicant's medical insurance or travel insurance; b) lost wages; c) compensation costs; d) legal fees; e) the losses suffered due to the criminal behavior shown by the victim; f) expenses incurred for crimes committed before April 1, 2007 (when this fund did not yet operate); g) expenses that can be covered by other federal or provincial programs.

Canada has a victimological service that also provides support to some categories of collaterally victimized people. We are specifically referring to parents who suffered the loss of a child as a result of a crime and respectively took time off from work to live with their trauma, unable to work. Federal support provides eligible parents with payments of $500 per week, paid every 2 weeks, for up to 35 weeks over a 3-year period. The suffering parent can interrupt the granting of this subsidy and resume at any time during these 3 years. The subsidy is also granted by filling out an online application form [15].

In Canada, victimological assistance is provided at all stages of the criminal process as well as post-trial by a multitude of agents that are integrated in a complex victimological service, able to satisfy a fairly varied range of requests from victims. This service provides assistance in 2 ways or levels: a) *federal*; and b) *provincial*. At the *federal level* works: a) Policy Center for Victim Issues (PCVI) which elaborates and implements Canada's victimological policy; b) National Office for Victims (NOVa) which ensures the victims' experience with the federal system of correction and related release; c) Canadian Benefit for Parents of Young Victims of Crime grant program; d) the service of providing assistance to victims of crimes within the Court for Correction and Conditional Release – Parole Board of Canada; e) the victimology service within the Correctional Service of Canada (CSC), a federal government agency responsible for the management of offenders who have received or received a prison sentence of two years or more, as well as those on probation.

At the *provincial level*, the following services are active: a) services offered by volunteers and non-governmental structures; b) community-based victim services fully or partially funded by the federal or provincial government that sometimes serve a specific clientele (minor victims, victims of sexual assault or domestic violence, etc.); c) court-based victim services (provincial courts); d) Police-based victim services; e) System-based victim services, independent of the Police, provincial courts and other authorities, within the framework the victim is assisted throughout the interactions with the criminal justice system.

It is admirable and good to follow Canada's example in the way it assists victims, both during their interaction with the criminal justice system and after the end of the criminal process, namely the volume of assistance and such thorough and detailed satisfaction of the personal needs of the victim is a positive example. This level of protection can be achieved only in a society where there is a true democracy and human being is a value.

By comparison, the Republic of Moldova did not have a legislative framework for the protection of crime victims even more than 20 years after the proclamation of independence, almost a quarter of a century. In 2016 the Parliament of the Republic of Moldova adopted a law in this regard. In that law, it is fixed that „The central administrative authority that elaborates, promotes and participates in the realization of the Government's policy in the field of rehabilitation of crime victims is the Ministry of Health, Labor and Social Protection".

From our point of view, the victimological assistance service in the Republic of Moldova is from the start launched from the wrong pillar. In this way, the victim becomes a social case and is not seen as an element that interacts with the criminal justice system. She is not asked for her

opinion, she is not questioned about the conditional release of the criminal, she is not even notified about his release etc.

Why is it a negative aspect that we look at the victim as a social case and not primarily as an element that interacts with the criminal justice system? First of all, because in the Republic of Moldova „social cases" are usually not resolved positively, we are referring to cases with children from alcoholic families, neglected elderly, invalids, etc., not only to those cases that served as context for the crimes. It follows that even the victimized persons, who in fact represent „social cases", will not be properly remedied and rehabilitated. But this is only one aspect of the precarious level of welfare provision in our country that we suppose we can overcome, but there are other reasons.

If we follow Canada's example, and rehabilitation and victimological assistance ~~we~~ will be transferred to the jurisdiction of the Ministry of Justice, then we could: a) offer victims more integrated services, making them knock on fewer doors; b) we would give them the chance to have access to more highly qualified specialists, who are aware not only of the legal side of the victim's interaction with the criminal justice system, but also of the psychological, social, etc., specialists who could make victim behavior dynamic in relation to her own rehabilitation, in relation to the carrying out of certain actions at certain procedural stages; specialists who would be able to evaluate more complexly the needs of the victim and the risks to which she is subjected, who could situationally ensure her contact with specialists from other fields, which would create conditions for the resolution of the aggressor-victim conflict relationship, which would increase the victim's legal skills and support her emotionally and informationally during the whole legal process; c) we would remove certain potential dangers for victims and we would succeed in creating conditions to integrate the activity of providing victimological assistance in the form of support services, with the more advanced approach of victim therapy and the activity of victimological crime prevention.

Last but not least, victims protection legislation cannot be adjusted to their needs without involving them and consulting their opinions. If the rehabilitation of the victims was managed within the Ministry of Justice, it would be simpler to keep a record of the victimized persons and it would be much simpler to help them become an element of the decision-making factor. Victims could be involved in the elaboration of a victimological crime prevention strategy, but also in implementation of such strategy, they could be stimulated to increase their level of community participation by promoting the example of success. Especially the victims of sexual aggression and domestic abuse need examples of cases successfully solved in therapy and in justice in order to gain courage in denouncing the aggressor as well as in getting involved in a therapeutic program, or, specifically in the segment of these crimes, persists the highest level of discouragement, victims being pessimistic and unconfident in the criminal justice system.

It is important for the victim to have confidence in the justice system, some certainty that the case will be resolved correctly, fairly, in accordance with legal norms. As well, the victim must be satisfied with the legal framework through which her interests can be defended, because only in this way victim can see a sense in her addressing to the state authorities. The benefits must be designed to appear clear and satisfying, otherwise the victims may feel that in order to obtain only a minimum amount of protection, support and assistance they have to make unreasonable efforts and think that this would traumatize them even more.

We conclude that it is reasonable for Republic of Moldova to take elements from Canada's example in creating a more branched, coherent, victimological protection and assistance service, correlated with the needs of victims and managed by the Ministry of Justice. In this way, we could also create premises for the implementation of positive practices of restorative justice that are becoming more and more popular and successfully developed in the modern world. It is important to develop in Republic of Moldova more advanced, more consistent and more efficient victimological assistance and rehabilitation programs. We must develop a more successful victimological crime

prevention strategy. In fact, we could say that our country finally will have a victimological policy within the criminal policy of the state, only when the protection, rehabilitation and assistance of victims will follow the Canadian example and will predominantly in the charge of the Ministry of Justice, which through its subdivisions, will ensure the victims' access to the services provided by the subjects of some subdivisions within other ministries (medical institutions, educational institutions, psychiatric clinics etc.).

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TRANSNATIONAL ORGANIZED CRIME IN THE CURRENT GEOPOLITICAL CONTEXT

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Summary

Organized crime, especially its transnational form, is one of the most serious threats not only to the security of particular states, but also to the entire world community. Its danger worsens with the increase in the level of mobility, flexibility and adaptability to political and socio-economic changes. At the same time, national and international policies focused on preventing and combating organized crime fail to dampen the very rapid evolution of this phenomenon. For these reasons, approaching the problems that organized crime evokes, including through the perspective of the appreciation of its geopolitical dimensions, is particularly important for identifying effective solutions aimed at reducing the danger and the continuous evolution of that phenomenon.

Keywords: transnational organized crime, geopolitical dimensions, globalization, dark economy, separatism, terrorism.

Introduction. At the beginning of the 21st century, the multiple processes interspersed in the world economy, in trade and in social-political life have become an inherent premise for the emergence of new manifestations in the criminal world, especially in transnational crime, which can be catalogued as the most recent and dangerous phenomenon that shapes the modern criminal image on a global level. Awareness of the global threat posed by transnational organized crime and the problems associated with the need to combat it appeared only at the end of the last century. Thus, at the fifth Congress of the United Nations Organization, organized in connection with the approach to the problems related to the prevention of crime and the treatment of offenders (Geneva, 1975), it was recognized for the first time that "...crime in the form of international business represents a threat much more serious compared to traditional forms of criminal manifestation" [1].

Organized crime is growing rapidly in countries where many state institutions are weakened and do not function suitably. Since geopolitical processes represent a continuous interaction of political and economic factors, a criminal organization are strengthened by taking advantage of political instability and, in turn, through their criminal activity, causes serious consequences arising from the destruction and ignoring of the official structures of the state. Among other things, this phenomenon had a devastating effect on several states, especially those from the former USSR (including the Republic of Moldova), still in the 80s and the first half of the 90s of the last century.

Discussions and results obtained. Still in the first decade of the XXI century the United Nations has identified the following profits obtained from various criminal activities practiced within the framework of organized crime: illicit drug trafficking brings income to criminal structures in proportion to approximately $320 billion per year; $250 billion is earned annually from the production and sale of counterfeit goods; human trafficking brings income to the criminal

world in the amount of $32 billion, and the illegal trafficking of criminals – $7 billion annually [2]. Therefore, migrant smuggling alone constitutes approximately 1% of all criminal profits obtained by organized crime as a result of transnational criminal activities.

According to some data recorded in a study carried out by GFI (Global Financial Integrity) from the USA is finds that globally the business of transnational crime is valued at an average of $1.6 trillion to $2.2 trillion annually. The study evaluates the overall size of criminal markets in 11 categories: the trafficking of drugs, arms, humans, human organs, counterfeiting of goods and products; ecological crimes like, illegal hunting and fishing, illegal mining, illegal logging and forests exploitation, illegal extraction and theft of crude oil [3].

Thus, from the results of this research, it was found that the most profitable crime is the production of counterfeit goods, with an annual turnover between $923 billion and $1.13 trillion. Between two-thirds and three-quarters of goods and products were counterfeited in China. Drug trafficking and human trafficking occupy the second and third positions in the list of the most profitable criminal activities, being at the same time significantly inferior to the production of counterfeit goods. The profits obtained from these criminal activities are estimated at $426-652 billion and $150.2 billion respectively [3].

The ranking of the profit obtained as a result of the criminal activities practiced within transnational organized crime [4]

Type of criminal activity	Estimated Annual Value (US $)
Counterfeiting	$923 billion to $1,13 trillion
Drug Trafficking	$426 billion to $652 billion
Illegal Logging	$52 billion to $157 billion
Human Trafficking	$150,2 billion
Illegal Mining	$12 billion to $48 billion
IUU Fishing	$15,5 billion to $36,4 billion
Illegal Wildlife Trade	$5 billion to $23 billion
Crude Oil Theft	$5,2 billion to $11,9 billion
Weapons Trafficking	$1,7 billion to $3,5 billion
Organ Trafficking	$840 billion to $1,7 billion
Trafficking in Cultural Property	$1,2 billion to $1,6 billion
Total	**$1,6 trillion to $2,2 trillion**

Estimates of the scale of transnational organized crime are difficult to arrive at due to the secretive nature of the activities and under-reporting by victims, but also due to the different, overlapping definitions and indicators used. Nevertheless, the UN has found in 2022 that an estimated $1.6 trillion, or 2.7 per cent of global GDP, is laundered annually. And according to the World Bank, $1 trillion per year is used to bribe public officials [5].

Transnational organized crime hits developing countries hardest, where criminal structures can steal billions of dollars' worth of resources in order to significantly increase their own financial means and savings. Being legalized through various fraudulent schemes, these resources are invested later in seemingly "legal" businesses that bring exorbitant profits to the leaders and representatives of the criminal world and allow them to camouflage their criminal activity and

shadow business. Therefore, many of the groups involved in transnational crime are disguised as businesses. These are commercial entities that provide goods or services to consumers. It often happens that these goods and services are illegal or at least obtained illegally. Some of these groups are so well organized and financed that they rival with the big official corporations. Besides these, globalization, digitization and other technological advances are further changing the nature of illicit markets and the modus operandi of transnational organized crime, including recently the emerging use of crypto currencies that make illicit financial flows very difficult to trace.

The era of examining transnational organized crime (TOC) separately from geopolitical discussions is over. TOC is a significant destabilizing force for countries and regions across the globe. Additionally, the connection of TOC groups to state officials and political figures demonstrates that TOC is part of a growing interconnected constellation of important issues surrounding war, conflict, and states [6].

Here it is timely to bring as an example the case with the Russian Federation, which, having a constant expansionist policy, started a war against the Republic of Moldova in 1992 and against Ukraine – in 2014 and in 2022. In the so-called "special operations" orchestrated by the leaders of the Kremlin, some criminal organizations politically subordinate to that regime were also involved. Thus, the separatist region on the left of the Dniester was and continues to be ruled by criminal structures rooted for more than three decades in the "Transnistrian political system", who apply the law and do justice as they please, manages illegal businesses that bring them enormous profits, commit crimes and other violations of the law, defy the rights and freedoms of citizens, etc. At the same time, they don't miss the opportunity to blackmail Chisinau officials every time they are "ordered" by Moscow or when they don't like certain official policies of the constitutional bodies.

With reference to this problem, in the specialized literature it is rightly considered that policies aimed at separatism do not promote stability, the development of poorer states, and nor the proliferation of democracy. Rather, separatism has a symbiotic relationship with transnational organized crime and terrorism [7].

Inadvertently, the criminalization and corruption of the populations living inside of these territories impedes the rule of law and the state's de facto control over its territory and population. If the effects of transnational crime in the region were limited to the territories in question, it in itself would not form as great a threat to democracy and freedom as it does today. The matter is that, the effects of human trafficking (the modern day slave trade), contraband product trade and illegal arms trade has an international butterfly effect on human, economic, territorial and financial security [7]. This is what characterizes the separatist region on the left of the Dniester, not controlled by the constitutional forces of the Republic of Moldova, being in fact an area of social-economic and political lechery well manipulated by the Russian Federation and its criminal elements.

The same situation, perhaps even worse, is in Ukraine, where the so-called "Wagner" Military Group has committed multiple war crimes and crimes against humanity. It is obvious that this criminal organization, camouflaged under the name of a military group in which around "...40,000 convicts recruited from Russian prisons were incorporated" [8], acted at the behest of the Moscow political factor. And when its leader, Evgheni Prigojin, rebelled and got out of the control of the Kremlin leaders, he didn't have long to live, his life being ended "...by a spectacular aerial destruction of a private plane" [9]. And this is only one of the many cases that have taken place in Russia, where politically inconvenient personalities die suddenly or simply disappear without a trace – a real ordeal organized by political factors and skillfully carried out by some official force structures in common with those who rule with the criminal world.

According to the 2022 U.S. National Security Strategy, strategic competition between the U.S. and its main competitor China, along with Russia, is shaping contemporary geopolitics, and the

result is expected to determine the future international order. Strategic competition is also considered a struggle between the rules-based liberal order versus the authoritarian model which undermines freedom, rule of law, and international commitments. China and Russia brazenly note their competition with the U.S., reiterating in a joint statement that "international relations are entering a new era," confirming their cooperation with "no limits" [6]. It should be noted that today in this competition China, but also Russia, is trying to involve several states, including from Europe (Hungary – EU country, Serbia) and Asia (Iran, North Korea, etc.).

However, the involvement of transnational organized crime in strategic competition is not limited only to authoritarian regimes. No country in the world is completely immune to this type of connection. As we see in many countries, as democratic progress returns, political elites and government institutions tend to use organized crime tactics or establish links with them in order to manipulate the political system and maintain power at any costs.

Traditionally, the relationship between organized crime and representatives of official state power begins with members of the group establishing a connection with persons affiliated with the state through such means as corruption, electoral support and the insertion of dubious personalities into the intern political system as representatives to ensure their interests.

On the other hand, no state will openly acknowledge its connections with criminal groups, especially when those groups are well known in the illicit markets. Most of the interaction will happen in the gray zone, where the legality and illegality of the groups and their actions are not readily apparent to external eyes [6].

Due to the globalization of criminal activities, the geopolitical dimension of organized crime has long been mentioned in the documents of international organizations which, convening at the highest level, encourage the states of the world to collaborate as efficiently as possible in the field of combating this negative phenomenon. It is rightly considered that transnational organized crime represents a new form deeply embedded in the phenomenon of current geopolitics, distinguished by its own character, multiple structural elements and well-developed protection systems. For these reasons, the measures applied at the national level can be effective in relation to a certain criminal group and ineffective when applied to another criminal group. So, the effectiveness of these measures decreases radically due to the transnational nature and increasing variety of criminal organizations.

It is important to take in account that organized crime does not exist in isolation from society and its institutions, but on the contrary, it actively penetrates the legal economy where formalizes the profits obtained from criminal activities, thus increasing the level of opacity of the economic sphere and expanding its dark side.

Therefore, the new geopolitical components such as the rapid development of global trade, the expansion of the freedom of people to move to any corner of the world, the development of systems that ensure very fast communication, the financial infrastructure that created enormous opportunities for conducting anonymous transactions, the rapid and unhindered movement of funds, the possibilities of concealing the source of the capital and the owners of the funds – are important factors that transnational criminal organizations increasingly use for their own purposes.

Conclusions. Although the geopolitical components are factors of social progress, nevertheless in their content there are multiple premises that influence organized crime, namely:

The crisis of government structures and the inefficiency of state institutions in countries that are in the process of transition influences the process of massive emigration of the population and the tendency of certain categories of people to improve their economic situation by violating the legal framework in this sphere;

The emergence of "black" markets with a complex organization and a high degree of interaction, the development of the dark economy, accompanied by the injection into the legal economic sector of funds obtained from criminal activities, as well as uncontrolled currency flows in

particularly large proportions;

The mobility of society, the accelerated and simple process of crossing borders, the lack of trust in the political factor and in the official structures of the state, including the justice system, determine crime and other violations of the law;

Boosting relations between representatives of criminal organizations and political actors has become a fairly frequent phenomenon in many states, and this considerably increases the danger to which the legal order and the security of the population are exposed at the national and global level.

Therefore, studying crime through the geopolitical dimensions facilitates not only the explanation of the level of rapid growth of transnational organized crime, but also the causes by virtue of which this phenomenon has become so dangerous that it threatens the international community and each individual state. All these factors must be taken into account and evaluated from an economic, political and criminological point of view in the development of an effective policy to prevent and combat the phenomenon of criminality, in general, and the organized crime, in particular.

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PREVENTING AND COMBATING CRIMES COMMITTED IN THE FIELD OF DOMESTIC VIOLENCE

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Summary

Preventing and combating domestic violence is one of the major objectives of the Government of the Republic of Moldova. The Republic of Moldova has made important progress in the development of the system for preventing and combating family violence, including the continuous improvement of the normative and institutional framework. Despite the fact that, by adopting the framework law on the prevention and combating of family violence, an important step was taken in the creation of the institutional and operational mechanism for solving cases of family violence, however there are certain gaps in it, which prevent the application them more efficiently.

The purpose of the study is to analyze the procedure for implementing the normative provisions of the framework law regarding the prevention and combating of family violence, to identify gaps based on the experience of other states and to propose the best solutions for improving the legal framework in this field.

Keywords: domestic violence, victim, abuser, protective order, protective measures, crime.

Introduction. Family violence, which we also call domestic violence, means all acts of physical, sexual, psychological or economic violence that occur in the family or in the domestic unit or between former or current spouses or partners, regardless of whether the aggressor shares or has shared the same residence with victim.

Over the years, the Republic of Moldova has made important progress in the development of the system for preventing and combating violence against women and family violence.

This fact is confirmed by the Evaluation Report of the National Strategy on the prevention and combating of violence against women and domestic violence 2018-2022, which demonstrates progress in this area, including: *the continuous improvement of the normative and institutional framework, the training of specialists and the provision of coordinated response mechanisms; the establishment of new placement services for victims of domestic violence and a service for child victims or witnesses of crimes; the establishment of the Commission for monitoring and analyzing cases of family violence resulting in death or serious bodily injury of the victims; increasing the number of restraining orders and protection orders issued, and the number of people assisted in placement centers; development of the sectoral and intersectoral operational framework for specialists, who respond to cases of domestic violence and sexual violence* [1].

At the same time, as we can see, the evaluation found delays in achieving the proposed objectives, among which: *the insufficiency of preventive actions in the field, of placement services for female victims throughout the country, of specialized services for victims of sexual violence, the non-execution of protection orders and the delay in examining the causes of domestic violence and sexual violence, the lack of financial resources allocated to this field by the central and local public authorities and the lack of a consolidated institutional framework responsible for the prevention*

and combating of family violence and sexual violence at the local level, lack of capacity to coordinate intersectoral interventions at the local level, to collect harmonized and appropriately disaggregated statistical data between different systems, etc. [1].

The purpose of the study is to analyze the procedure for implementing the normative provisions of the framework law regarding the prevention and combating of family violence, to identify gaps based on the experience of other states, namely Romania, and to propose the most optimal solutions for improving the legal framework in this field.

Thus, in the sense of the Law on the prevention and combating of family violence No. 45 from 01.03.2007, by Art. 2, the notion of family violence means: "A*cts of physical, sexual, psychological, spiritual or economic violence, with the exception of actions of self-defense or defense of another person, including the threat of such acts, committed by a family member against another member of the same family, which caused material or moral damage to the victim*" [2].

From the given definition we can highlight the following forms of family violence: physical, sexual, psychological, spiritual and economic.

In the Romanian Law for the prevention and combating of family violence No. 217/2003, for example, other forms of violence are provided, among which: verbal, social [3]. Each form of violence is characterized by certain features.

Comparing, according to features, the forms of violence provided for in the law of our state and the law of Romania, we can conclude that, despite the different names of violence, there are no big differences, because verbal violence and social violence in our legislation is provided as psychological violence. It is based on these features that it is possible to determine whether violence occurs in families, namely in what form.

The law further stipulates who must be the subjects of the violence in order for its provisions to be applied.

Mandatory, as subjects of violence, according to the law must be: *the aggressor* and *the victim* – members of the same family. Family members, in the sense of the law, are:

a) in the condition of cohabitation: persons in marriage, in divorce, under guardianship and conservatorship, relatives, their kin, spouses of relatives, persons in relationships similar to those between spouses (cohabitation) or between parents and children;

b) in the condition of living separately: married, divorced persons, relatives, their kin, adopted children, persons under guardianship, persons who are or have been in relationships similar to those between spouses (cohabitation).

The first body that is competent to offer help in the case of the victim of family violence, according to Art. 12^1 of the law, is the Police.

Thus, in case of detection of acts of domestic violence, the Police is obliged to issue an emergency restraining order regarding the aggressor. This order can be issued either up to 05 days, or up to 10 days, whereby the aggressor is required to leave the place of common residence with the victim during this period. The aggressor has the right to contest the emergency restriction order in court under the conditions of administrative litigation. Filing the request does not suspend the action of the restriction order. In the same way, the aggressor is warned of what awaits him in case of violation of this order. According to the Art. 318^1 of the Criminal Code of the Republic of Moldova, for violating the emergency restriction order, the aggressor is punished more severely, either with unpaid work for the benefit of the community from 45 to 60 hours, or with criminal detention from 10 to 15 days [4].

During the action period of the emergency restriction order, the victim has the right to request, under the law, the release of the protection order. The action of the emergency restriction order, in this case, is extended by law and ends with the implementation of the protection order.

Through the protection ordinance, according to Art. 15, the following measures may be applied to the aggressor, for a period of up to 3 months:

a) the obligation to temporarily leave the common home or to stay away from the victim's home, without deciding on the ownership of the property;

b) the obligation to stay away from the victim's location, also excluding any visual contact with the victim or her children, with other dependents;

c) the prohibition of any contact, including by telephone, by correspondence or in any other way, with the victim or her children, with other persons dependent on her;

d) the prohibition to approach certain places: the victim's place of work, the children's place of study, other specific places that the protected person frequents;

e) the obligation, until the case is settled, to contribute to the maintenance of the children he / she has in common with the victim;

g) the limitation of unilateral disposal of common goods;

h) the obligation to participate in a special treatment or counseling program, if such an action is determined by the court to be necessary for the reduction of violence or its disappearance;

i) establishing a temporary regime of visitation of his / her minor children;

j) the prohibition to keep and carry a weapon.

If in case of violation of the emergency restriction order, the aggressor is held criminally liable, then already in case of violation of the restriction order, the aggressor is held criminally liable, according to Art. 320^1 of the Criminal Code of the Republic of Moldova, and can be sanctioned either "*with unpaid work for the benefit of the community from 160 to 200 hours, or with imprisonment of up to 4 years*" [5].

Practice shows that the aggressors very often end up with the harshest punishment – prison, because after they are forced to leave the common place of living with the victim, but not being in fact that the law in Art. 7, point. d), Art. 10, point b), provides for the existence of *assistance and counseling centers / services for family aggressors*, where the aggressors could go and stay for a certain period of time, these centers do not exist in all districts. Respectively, staying outside, the aggressors, due to the lack of another home and sources of livelihood, return to the victims, violating, again, either the emergency restriction order or the restriction ordinance. It is important to mention that in such cases there is great danger for the victims, because the aggressors become more aggressive due to the lack of another place to live, the Center/Service for assistance and counseling for family aggressors and sources of livelihood.

Namely the assistance and counseling Centers/Services for family aggressors, according to Art. 10 para (3) of the Law, are responsible for providing specialized information services, individual/group counseling of the couple, legal counseling, referral and facilitating access of the aggressor to medical, employment and professional services.

According to Art. 15 para (1^1) of the law, "*The protective measures provided in lined (1) letter a)–d) it is compulsorily applied with electronic monitoring. In this case, the provisions of Art. 271^1 of the Enforcement Code of the Republic of Moldova No. 443/2004 is applied accordingly".*

Likewise, due to the lack of another place to live or the counseling Center/Service for assistance and counseling for family aggressors, the aggressor, when subject to electronic monitoring, is unable to charge the special device, remaining unsupervised during this time, and presenting, again, danger to the victim.

Regrettably, due to the lack of assistance and counseling Center/Service for family aggressors, we also have cases of suicide of aggressors.

We believe that, for greater effectiveness in the field of preventing and combating domestic violence, or preventing negative consequences, the number of Centers or Services for aggressors must be greater, at least in each district.

In other words, it is necessary not only to establish new placement services for victims of family violence, but also to establish a greater number of assistance and counseling Centers/ Services for family aggressors, with the aim of reducing the number of restraining orders and

protection orders.

Another problem, as practice shows, consists in the intentional non-execution or evasion of the execution by the aggressor of the court decision, if it was committed after the application of the contraventional sanction.

As it was already mentioned above, the aggressor in case of violation of the emergency restriction order is held criminally liable, in case of violation of the restriction order, the aggressor is held criminally liable, according to Art. 15^2 of the framework law, para (6) which provides in general: "*The refusal or evasion of the aggressor from the execution of the requirements of the emergency restriction order/protection order attracts liability according to the law".*

It is desirable that this, first of all, be strictly mentioned in the law, as for example in the law of Romania, in Art. 47, (1): "*Violation by the person against whom a protection order was issued of any of the measures provided for in Art. 38 lined up (1), (4) and (5) letter a) and b) and ordered by the protection order, constitutes a crime and is punishable by imprisonment from 6 months to 5 years. (2) Violation by the person against whom a provisional protection order was issued of any of the measures provided for in Art. 31 lined up (1) and ordered by the provisional protection order constitutes a crime and is punishable by imprisonment from 6 months to 5 years".*

Secondly, it is necessary, however, to be determined in the law, and the competence of the police representative to accompany the aggressor to the probation body, where the installation of electronic monitoring takes place, after he has informed the aggressor of the content of the protection order.

At the moment, the law only provides, in Art. 15 para (5), "*The supervision of the fulfillment of the measures established in the protection ordinance belongs to the competence of the Police Body and the Probation Body in the manner provided by law"*. In accordance with Art. 15^2, para (2), "*The Police inform and explain to the aggressor the protection measures established for the victim".*

Which refers to the aggressor reaching the probation body, that is very important, because precisely from the moment of the installation of electronic monitoring, the victim is truly protected from the aggressor, unfortunately, it remains at the disposal of the aggressor. That is why we have many cases in practice, when the aggressors arrive at the probation body after a month, presenting, in the same way, a danger for the victim. We are not talking about the emotional state, the psychological suffering of the victim during this period.

What else can we find, comparing the legislation of Romania with the legislation of our state in this field, for example, the law of Romania Art. 38 para (3) provides: "*By the same decision, the court can also order the aggressor to bear the rent and/or maintenance for the temporary home, where the victim, minor children or other family members live or will live due to the impossibility of staying in the family home",* which is missing in the law of the Republic of Moldova.

We believe that it is necessary to introduce the respective regulations in our law, more than that not only forcing the aggressor to bear the expenses related to the rent and/or maintenance of the temporary home for the victim and children, but also the expenses, related to the maintenance of the children during the given period, reparation for material damage for property destroyed during the conflict, and reparation for moral damage for domestic violence.

Finally, we can mention that, in order to prevent and combat violence against women and violence in the family, it is still necessary to improve the normative and institutional framework, namely it is desirable to introduce express provisions in the law regarding: the existence of assistance and counseling Centers/Services for family aggressors (in which districts); the competence of the Police representative to accompany the aggressor to the probation body after informing him of the protection order; legal liability and sanctions in the case of the aggressor's refusal or avoidance of the execution of the requirements of the emergency restraining order/protection order; obliging the aggressor to bear the expenses related to the rent and/or maintenance of the temporary home for the victim and the children, the expenses related to the maintenance of the

children during the given period, the repair of the material damage for the destroyed goods, and the repair of the moral damage for domestic violence.

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INTERNATIONAL COOPERATION IN THE INVESTIGATION OF ONLINE CHILD SEXUAL ABUSE AND SEXUAL EXPLOITATION CRIMES

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Summary

The article examines combating cybercrime, focusing on online child sexual abuse and exploitation. The author highlights the complexity of this problem, determined by the cross-border nature of the crimes and the rapid evolution of technologies. The present study emphasises the importance and the need for international cooperation for the analysed category of crimes. Information sharing between national and international authorities is essential for identifying offenders and protecting victims. The article explores forms of international legal assistance, with rogatory commissions and joint investigation teams being central, but also explores forms of international legal assistance specific to this category of crime. Compliance with and implementation of international conventions are also highlighted as vital in combating such crimes. Thus, the article provides a detailed analysis of the challenges and solutions needed to counter online child sexual abuse and exploitation, highlighting the need for a coordinated and comprehensive approach.

Keywords: international cooperation, international legal assistance in criminal matters, sexual abuse, sexual exploitation, information technology, international conventions, rogatory commission, joint investigation team.

Introduction. The fight against cybercrime entails a complex and challenging endeavor, owing to several factors. Firstly, its nature transcends national borders, given that cybercriminals can operate from anywhere in the world and interact with individuals from different countries, unrestricted by geographical boundaries. This underscores the essentiality of international coordination and cooperation in combating this category of offenses.

In addition to its transnational nature, the rapid evolution of informational technologies and the online environment adds another complex dimension to the fight against cybercrime. Due to the swift development of informational technologies and the methods employed in committing offenses in the online realm, cybercriminals pose a formidable challenge for law enforcement agencies. They utilize sophisticated tools and tactics to conceal their tracks and evade detection. Consequently, national authorities must be equally flexible and adaptable, investing in advanced technical capabilities and continuously refining their investigative methods to address these challenges.

In this context, regarding online child sexual abuse and exploitation, international cooperation and information exchange between law enforcement authorities are imperative in the fight against this category of crimes.

Thus, without close cooperation between various agencies, institutions, and organizations, investigating the aforementioned category of criminal offenses is practically difficult. This collaboration constitutes a mechanism whose components must work consistently, uniformly, and closely intertwined. Without any one of these components, the mechanism would not be functional" [1, p.138].

One of the most crucial aspects of international cooperation in these cases is the fact that online child sexual abuse and exploitation crimes have no boundaries in terms of the geographical location of the victim and the wrongdoer. In this regard, it is important for authorities to collaborate in tracking down offenders and protecting victims in an efficient and coordinated manner. This may involve the exchange of data and information regarding the operating methods of offenders, as well as the identification and monitoring of international networks engaged in human trafficking and sexual exploitation.

In addition to identifying and tracking down offenders, international cooperation is essential for the protection of victims. Through the exchange of best practices between authorities and international organizations, programs and resources can be developed to provide assistance, support, and protection to victims of online sexual abuse and exploitation.

Methods and materials applied. The article was drafted utilizing theoretical, normative, and empirical material. It was accomplished through the application of several methods specific to procedural law and forensic science, such as logical method, comparative analysis method, and systemic analysis.

Discussions and results obtained. Within the criminal investigation, "for the purpose of objectively, comprehensively, and thoroughly examining all aspects of the case circumstances, there is sometimes a need to conduct investigative actions outside the territory of the Republic of Moldova" [2, p.336].

Regarding international cooperation in the context of online child sexual abuse and exploitation, we can mention that the collaboration between states in combating this category of crime has two main aspects:

Collaboration or concerted action between states to combat this category of crimes;

Mutual legal assistance in the conduct of criminal justice by each State on its territory, including direct investigation of cases.

The main difference between these forms of international cooperation is that the first of them – cooperation between states to combat this category of crimes – involves an extra-procedural conclusion of states from the entire international community, aimed at regulating and preventing the spread of the phenomenon of online child sexual abuse or exploitation. Mutual legal assistance involves procedural cooperation in the investigation of specific criminal offences by two or more States when there are indications that persons or important information for the investigation of these offences may be found on the territory of these States.

Rodica Mihaela Stănoiu mentions that "judicial cooperation in criminal matters constitutes an expression of collaboration between sovereign states" [3, p.14]. Similarly, Neagu Ion adds that this collaboration is "intended to strengthen international solidarity in the fight against the phenomenon of crime" [4, p.645].

Correspondingly, regarding mutual legal assistance, several authors argue that "judicially characterized criminal assistance refers to the assistance provided by judicial authorities of another state during the course of a criminal proceeding to the judicial authorities of the state where the proceeding takes place, and it consists, specifically, in the execution, delivery, or communication of procedural acts necessary for the resolution of that proceeding" [5, p.411].

As a concept, "international legal assistance in criminal matters means the collaboration between one state, referred to as the ,,Requesting State", and another state, known as the ,,Requested State", through the competent authorities established by each state, in accordance with a bilateral treaty or an international treaty (multilateral) to which both states have acceded, or on the basis of reciprocity, through a request, termed a ,,request for legal assistance", to provide aid in a criminal proceeding for the resolution of the criminal case or the execution of a judicial decision" [6, p.6].

In this context, when discussing international cooperation in combating online child sexual

abuse or exploitation, it is imperative to emphasize the significance of coherence. This entails the adoption and implementation of international provisions that regulate the provision of various reciprocal laws, penal assistance between states, and between law enforcement agencies, among others. Such agreements encompass conventions, treaties, and agreements, alongside complementary protocols.

International conventions provide the necessary legal framework for states to undertake clear commitments regarding the combatting of certain categories of offenses/crimes. These commitments may include obligations such as the development and implementation of appropriate national legislation, the strengthening of institutional capacities, judicial and law enforcement cooperation, as well as the exchange of information and evidence.

Currently, due to the significant increase in the number of specific treaties, international cooperation in this field operates in various directions and at multiple levels. It can be official or unofficial, depending on its nature, and can be bilateral or multilateral, depending on the extent of participant involvement.

With regard to the category of offences addressed in this paper, the areas and principles of international cooperation covering cases of online child sexual abuse and exploitation are governed by a number of international acts, among which: The Budapest Convention on Cybercrime (Council of Europe, Budapest, 23.11.2001); The Council of Europe Convention on Protection of Children against Sexual Exploitation and Sexual Abuse (the Lanzarote Convention, Council of Europe, 25.10.2007); The Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography to the Convention on the Rights of the Child (UN, 06.09.2000).

One of the purposes of these conventions is to facilitate international cooperation and harmonize legislation across different countries to ensure a consistent approach to similar issues in all states. This is achieved through the implementation of uniform standards for combating criminality and protecting child victims.

The effective implementation of these conventions requires a common and coordinated effort among the involved states, as well as between their law enforcement agencies and other relevant authorities. The exchange of best practices, reciprocal technical assistance, and financial support can contribute to strengthening national capacities and enhancing international cooperation in combating transnational crime.

Throughout the history of its development, international and regional provisions concerning the targeted domain have been complemented by a fairly large number of diverse normative documents. At the same time, it must be noted that these documents often bear similarity in content, especially regarding the calls addressed to governments and legislators of all countries to strengthen the fight against online sexual exploitation and abuse of minors. This phenomenon, seemingly natural at first glance, nevertheless gives rise to conflicting assessments. On the one hand, this fact can be appreciated as a manifestation of the international community's concern for the fate of children subjected to sexual exploitation and abuse online and as evidence of its persistent efforts to ensure that such situations are minimized. On the other hand, this fact can be seen as additional evidence that the problem is not truly resolved or is not addressed in an efficient manner [7].

Many of the international legal instruments in the analyzed field, which form the basis of interstate cooperation in combating sexual exploitation and abuse of minors in the online environment, provide recommendations regarding the criminalization of key acts against this socially dangerous phenomenon. Most of these recommendations have been reflected in domestic criminal law. Therefore, it can be said that it is in line with international standards in combating offenses related to sexual exploitation and abuse of minors, committed using information technologies.

Regarding the second manifestation of international cooperation, in accordance with the provisions of Chapter IX of the Criminal Procedure Code, international legal assistance in criminal

matters is carried out in various forms, all based on the international acts to which the Republic of Moldova is a party.

In this regard, the Republic of Moldova has ratified a series of international conventions such as: the European Convention on Mutual Assistance in Criminal Matters of 24 April 1959 and additional protocols; the European Convention on Extradition adopted in Strasbourg on 13.12.1957 and additional protocols; the Convention on Legal Aid and Legal Relations in Civil, Family and Criminal Cases, signed in Minsk on 22.01.1993 (referred to as the CIS Convention); the European Convention on the International Validity of Criminal Judgments of 28 May 1970; the European Convention on the Transfer of Proceedings in Criminal Matters of 15 May 1972 and the Convention on Action Against Trafficking in Human Beings of 16 May 2005. Similarly, the Agreement on Preventing and Combating Cross-Border Crime, signed in Bucharest on 26 May 1999 within the framework of the South-East European Cooperation Initiative (SECI), which entered into force in the Republic of Moldova on 1 February 2000, is also important.

According to the basic rule, legal assistance can be requested and granted only when there is a bilateral or multilateral treaty applicable between the Requesting State and the Requested State or states which is applicable to both the Republic of Moldova and the Requesting State. However, in the absence of a concluded treaty, international legal assistance can be granted on the principle of reciprocity through diplomatic channels.

Some states (e.g., the Russian Federation) may be requested through a rogatory commission request according to several treaties. In this case, we consider that the law enforcement body or prosecutor will mention in the request both international treaties, and in some cases, even more. The Republic of Moldova has signed bilateral treaties with several countries. For example, the Treaty between the Republic of Moldova and the Russian Federation on legal assistance and legal relations in civil, family, and criminal matters dated 25.02.1993, signed in Moscow. If the requested state is a party to multiple international or bilateral treaties, the main international treaty and the international or bilateral treaty depending on the category of the offense will be indicated [2, p.339]

In accordance with the provisions of Article 532 of the Criminal Procedure Code, in conjunction with the provisions of Article 7 of Law No. 371 of December 1, 2006, regarding international legal assistance in criminal matters, during the criminal investigation phase, the competent authority for granting legal assistance in criminal matters is the Prosecutor General's Office. This activity is carried out through the Legal Assistance and International Cooperation Section of the Prosecutor General's Office.

Indeed, we will now proceed to analyze the forms of international legal assistance applicable to the investigation of cases of online sexual abuse or exploitation of minors.

Given that we are referring to the prosecution stage, and given the practice of investigating offences related to online child sexual abuse and exploitation, the following forms of international legal assistance in criminal matters are relevant:

– transmission of documents, data and information;
– communication of procedural documents;
– summoning witnesses, experts and persons sought;
– rogatory commissions;
– extradition.

We will not go into a detailed analysis of these forms of international assistance, as they are specific not only to the category of offences analysed, but are common to all categories of offences.

It should be noted, however, that in cases of investigation the offences of online sexual abuse or sexual exploitation of minors, one of the most common forms of international legal assistance in criminal matters is the request for rogatory commission. This request is made if the prosecuting authority in the criminal case, in which the prosecution has been initiated on the basis of the ele-

ments of one of the offences provided for in the Criminal Code to which the actions in question can be classified, considers it necessary to carry out criminal prosecutions in the territory of another State, usually in that State where the offender is located.

For example, a request for a rogatory commission was sent to the competent authorities of the United States of America in a criminal case [11], initiated on the fact that in the period of time 02.01.2020-11.01.2020 persons unidentified by the prosecuting body, users of the accounts of the social network (www.instagram.com), manifesting a verbal behavior that creates an unpleasant, hostile atmosphere have requested and received by mental coercion from the minor X, photos in which the latter appears naked, in various indecent poses. Thus, in order to establish the identity of the perpetrators, to establish guilt, as well as other important circumstances for the just resolution of the case, arose the need to obtain from the service "Instagram.Inc." belonging to the company "Facebook.Inc." based in the USA, and from the company "Google.Inc." with its headquarters in the USA, through a rogatory commission, the objects and documents containing information that constitutes a trade secret (such as: IP addresses, as well as other technical characteristics of the computer systems, networks and connections from which web profiles were managed, telephone numbers, e-mail addresses, data indicated when registering (activating) the profile or restoring access, correspondence conducted, etc.).

Another eloquent example confirming the frequent use of rogatory request in the process of investigating crimes regarding minors online sexual abuse or sexual exploitation, is the criminal case [12] initiated on the fact that in the period of time from the beginning of February 2020-until now, persons unknown to the prosecuting authority, through the social network "Facebook" and the application "Messenger", have conducted discussions of a sexual nature with the aim of inducing sexual intercourse and other actions of a sexual nature, requesting by threat, coercion and blackmail, nude, indecent photo images of the minor X. Given that it was established that the alleged offender's home is in Bucharest, Romania, and that the evidence gathered gives rise to a reasonable assumption that the offender's home may contain instruments that were used to commit the crime, which cannot be obtained through other evidentiary procedures, the competent Romanian authorities were requested to carry out a search at the home of the identified person, to carry out an information expert's report on the objects seized during the search and to inform about the results, etc.

At the same time, given current trends in the prosecution of online child sexual abuse or sexual exploitation cases, an increasingly common form of international legal assistance is the formation of joint investigation teams.

The joint investigation team (JIT) in the context of international mutual legal assistance is a team composed of representatives of several countries working together to investigate and solve crimes with transnational elements.

Taking into account that since 01.12.2013 the Second Additional Protocol to the Council of Europe Convention on Mutual Assistance in Criminal Matters entered into force for the Republic of Moldova, the Criminal Procedure Code was completed with Article 540^2, Section 1^2, Chapter IX, by Law No.66 of 05.03.2012, in force since 27.10.2012, which constitutes the national legal basis for the formation of the JIT.

The benefit of this form of international legal assistance is that it is a flexible prosecution tool, as it "allows direct collection and direct exchange of information and evidence without the need to use traditional means of mutual legal assistance" [8], and allows the prosecution to coordinate its efforts with direct exchanges of information. In addition, the JIT formation procedure and working process are less formalised, unlimited real-time exchange of information and/or evidence is possible, and procedures are parallel and coordinated (in terms of common operational objectives, agreement on prosecution strategies, etc.).

However, given the extensive provisions on international assistance in cases of online sexu-

al abuse and sexual exploitation of minors, in addition to the general forms of international assistance described in the Criminal Procedure Code, the following forms of international assistance in investigating cases of online sexual abuse and exploitation of minors are also specific to the category of offences under consideration, such as: case detection and reporting systems, mutual assistance in provisional measures, establishment of a 24/7 network, use/practice of the possibilities and opportunities of various international police organisations, such as Interpol and Europol, and other practices.

As regards the use of *international systems for detecting and reporting cases of online child sexual abuse or exploitation*, this form of interaction is specific to the initial stage of the investigation of cases, as the information received through these systems forms the basis for the prosecution's decision to prosecute.

Thus, this cooperation to detect cases of online sexual abuse or exploitation of minors is carried out through:

Databases containing interlinked online child sexual abuse material that facilitate the victim identification process. An example would be the International *Child Sexual Exploitation Database* (ICSE) managed by Interpol and funded by the European Commission. This form of interaction is one of high frequency of use. Thus, as an example, the criminal case [13] initiated on the fact that in the period May 2020-July 2020, YYY being on the territory of the Republic of Moldova, with the intention of distributing, copying, using or possessing images or other representations of one or more children engaged in real or simulated sexually explicit activities, or images or other representations of the genitals of a child, depicted in a lewd or obscene manner, in electronic form, using the computer system and the internet network via the 'Google' platform, downloaded, copied and distributed 19 graphic, photo and video files, which according to the ICSE, administered by the ICPO 'Interpol', constitute child pornography.

In order to formulate the charge, the prosecuting authority in the investigation process shall have recourse to check the files concerned in the criminal case in the database specialized in the identification of victims of child pornography, child abuse and sexual exploitation "ICSE", managed by the ICPO "Interpol". Thus, after cross-checking the data detected with the Child Protection Information System and the Interpol ICSE database, it is possible to establish which files containing child pornography exist and are registered in the Child Protection Information System as child pornography material, with their identification path.

2) *EUROPOL's Focal Point Twins Unit* plays a crucial role in the identification of victims at EU level. In the case of victims from third world countries, EUROPOL, in addition to its collaboration with INTERPOL, also maintains contact points with law enforcement agencies and NGOs in those countries.

An eloquent example from national practice of the use of this form of cooperation can serve the criminal case [14] initiated on the fact that in the period of time September-October 2020, persons unidentified by the prosecuting body, through the profile that is registered in the social network "Instagram", conducted obscene discussions regarding sexual relations with the minor X, provided her with pornographic material as an example to repeat the same actions in the creation of their own photo and video recordings, which they subsequently requested and received from the minor in electronic form, and distributed to other persons via social networks.

In order to identify the location of the offender who used the Instagram profile, a request was made to the service "Instagram,Inc." belonging to the company "Facebook.Inc.", resulting in the determination of the location country of the alleged offender – Belgium. In order to establish the concrete location of the suspect, a request was made to Europol.

3) Establishment of the INHOPE online illegal content reporting service, a network of 51 hotlines in 45 countries around the world, including EU countries, which have memoranda of cooperation with law enforcement agencies and establish procedures for responding to reports

received from Internet users. If they identify illegal content, the hotline services refer the matter to law enforcement agencies and in many cases the Internet service providers hosting the material [9, p.60].

4) The most common mechanism used is the cooperation mechanism manifested by the referral to law enforcement agencies in the Republic of Moldova by the *National Centre for Missing and Exploited Children* (NCMEC), which is a private non-profit organization whose mission is to help find missing children, reduce the sexual exploitation of children and prevent the victimization of children.

Mutual assistance in provisional measures involves the implementation of special measures tailored to the specific nature of offences committed using Information and Communication Technology (ICT). These measures are governed in particular by the Budapest Convention.

Thus, Article 29 of the said Convention governs the expeditious preservation of stored computer data and provides that a Party may request another Party to order or otherwise require the expeditious preservation of data stored by means of a computer system located in the territory of that other Party and to which the requesting Party intends to make a request for mutual assistance with a view to search or access by similar means, seizure or obtaining by similar means, or disclosure of the data in question [10].

The 24/7 network is a form of international cooperation established by the Budapest Convention, which involves the designation of a point of contact, available 24 hours a day, 7 days a week, for the purpose of providing immediate assistance in the investigation of offences relating to computer systems or data, or for gathering evidence of a crime in electronic form.

The 24/7 contact points in the Signatory States are established within the Ministry of Interior Affairs, with the exception of the Republic of Moldova, which has established the contact point within the Prosecutor's Office. Usually, these contact points are persons from the specialised units for combating cybercrime. The key responsibility of these units is data retention, but this is only effective where state laws also regulate the obligation of ISPs to retain traffic data [9, p.60].

Thus, to exemplify the application of this mechanism, suppose that the police of a Budapest Convention member state discover the individual IP addresses of a criminal community exchanging CSAM via newsgroups. The locations of these IP addresses are in a number of countries with different data retention regimes. It is therefore necessary to secure the data abroad as soon as possible to avoid losing important information for further investigation.

For this purpose, the National Contact Point immediately sends these IP addresses and their timestamps to its counterparts in separate e-mails and requests them to keep all associated data. As the requesting party has not been able to gather much information at this stage and as the provisional data retention measure does not require lengthy documentation, unlike a request for international legal assistance, the national contact point only shares the essential findings of the criminal investigation.

Most of the data requested through the 24/7 contact points can be provided by Internet Service Providers. Respectively, the existence of functional cooperation mechanisms with these entities is necessary to ensure the efficient functioning of the 24/7 contact points. In the absence of an explicit legal framework the situation could be remedied by formal memoranda of cooperation with ISPs, following the model of the Council of Europe Recommendations for cooperation between law enforcement authorities and ISPs against cybercrime.

Conclusions. In conclusion, it can be said that tackling the complex and difficult fight against online sexual abuse and exploitation of minors requires strong and well-coordinated international collaboration. The cross-border nature of these crimes, which transcends national boundaries, emphasises the importance of cooperation between states to identify and prosecute offenders effectively.

The rapid evolution of technology and the online environment adds a complex dimension,

forcing authorities to invest in advanced technical capabilities and constantly adapt their investigative methods. International conventions, such as the Budapest Convention or the Lanzarote Convention provide the necessary legal framework for this collaboration and promote uniform standards for combating these crimes.

The effective implementation of international cooperation mechanisms can make a significant contribution to protecting children and reducing these serious crimes. However, it is essential that States continue to strengthen their cooperation and improve their tools and strategies in order to respond increasingly effectively to the challenges in this rapidly evolving field.

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THE ISSUE OF CRIMINAL LIABILITY FOR DESERTION IN THE SEPARATIST TRANSNISTRIAN REGION

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Summary

The authors undertake a historical and documentary incursion in the article, in order to establish the events that proceeded and those that succeeded the Dniester war of 1992 for the defense of the independence and territorial integrity of the Republic of Moldova. Along these lines, it is mentioned that, during the current stage, young people in the region controlled by Russian troops are obliged to respect the "legislation" of an outlawed separatist regime. Apparently, recruits from the region are deprived of the opportunity to know the History of our nation, the legislation of the Republic of Moldova as well as international legislation. The separatist regime in Tiraspol requires these young people to defend a criminal group that cannot in any way be considered an independent state. At the same time, the "law bodies" of the so-called DMR ("Dniester Moldavian Republic") follow the young people who live in the region, who refuse to do military service. Following the threat of a custodial sentence, they are forced to enlist in the so-called Transnistrian army.

Keywords: the Republic of Moldova, constitutional authorities, separatist regime, paramilitary units, military service, recruits, desertion.

Introduction. For more than three decades, the Republic of Moldova has faced a series of severe problems threatening national security, which are generated by the separatist regime from Tiraspol, supported economically and militarily by the Russian Federation. Attempts by constitutional bodies to resolve these issues peacefully are blocked by the Russian Federation, which maintains its occupation army in the region. The political leadership from the Kremlin forced the separatist regime in Tiraspol to organize its activity according to the political, legal, military and economic system of Russia. The means of Russian propaganda to justify the presence of the occupation army on the territory of the Republic of Moldova bring various accusations to the constitutional authorities, and exert pressure on them to recognize the legitimacy of the separatist regime from Tiraspol. In this context, the Russian army of occupation is considered by the nomenclature of the self-proclaimed DMR as a "factor of stability" in the region, while in reality this army is a generator of risks not only for the Republic of Moldova, but also for the whole of Europe.

Methods and materials applied. Within the study limits of this article, the following methods were applied: historical, analysis, synthesis, comparison and logical awareness. Publications of scholars in the field, archival materials and relevant legislation were also used as well.

Discussions and results obtained. After the end of the war launched by the 14th Army of the Russian Federation against Moldova and the signing of the Peace Agreement of 21 July 1992, the separatist regime in Tiraspol under the protection of Russian military troops began to create its own armed forces to use them against the constitutional bodies of the Republic of Moldova. Thus, brutally violating human rights, the separatists began to force the young people of the region to do military service within the pseudo-force structures, illegally created. Those who refused were prosecuted and convicted of desertion and evasion of military service. Multiple cases of violation of the rights and freedoms of citizens by the separatist regime from Tiraspol have come to the attention of the state authorities. Therefore, the issue of criminal responsibility for alleged acts of desertion from the so-called army of the DMR is on the agenda of the government of the Republic of Moldova.

Unfortunately, even at the current stage young people in the region controlled by Russian troops are forced to respect the "legislation" of an outlawed separatist regime. At the same time, the soldiers of the so-called Transnistrian army are subjected to a process of ideological "education" based on the falsified course of history, edited by the pseudo-scholars promoted by the separatist regime from Tiraspol and the Russian Federation. In this sense, recruits from that region are deprived of the opportunity to know the History of our nation, the legislation of the Republic of Moldova, as well as international legislation. In reality, the separatist regime in Tiraspol requires these young people to defend a criminal group that cannot in any way be considered an independent state. It is necessary to note the fact that each country during its historical evolution created a system of values and traditions based on which it built legal norms that were binding for citizens. Reconstructing the historical events, we find that in the Romanian space "The organization of an army could not take place without the existence of mandatory rules of conduct for all those who were part of the armed forces. These rules have evolved along with the development of society. A series of legal-penal norms in the current Criminal Code, as well as the provisions of other special laws find their roots in the military tradition" [1, p.284].

An important provision provided by the Criminal Code of the Republic of Moldova, which aims to strengthen the responsibility of the military towards the state, is the provision from Art. 371 – *The Desertion*. The reasoning behind that provision lies in the fact that discipline, as a side of individual behavior, although it is common to many spheres of human activity, in the military field has a much deeper connotation.

The importance of military discipline and its place in the organization of the state was very well noticed by the Rulers of the Romanian Lands who were aware of the fact that, in order to succeed in the battles with the attackers, who were numerically superior, they had, first of all, to have a devoted following willing to lose even their lives on the battlefield, if necessary. That is why the harshest punishments were applied to soldiers specifically for desertion. A military code of the Moldavians has been preserved since the medieval period (See: Ioan Vodă the Terrible – Flint Governor. In: //www.descoperă.ro), which covered a single paragraph: "The fugitive who will leave the field of battle will be punished with a more terrible death than what could have befallen him in battle from the enemy". Following the above, we find that the glorious deeds of our forefathers were due to a good organization and discipline of the military forces" [2, p.287].

A high level of civic consciousness was shown by our compatriots who rushed forward with weapons in hand to defend the independence and territorial integrity of the Republic of Moldova during the Dniester war in 1992: "on March 2, 1992, this (conflict – author note), fueled and directed from the imperial center, degenerates into a real Moldovan-Russian war, not by chance, precisely at the moment of the admission of the Republic of Moldova to the United Nations organization.

The troops of the 14th Army, deployed to the left of the Dniester, with its entire officer corps, educated in the Soviet imperial spirit, remained devoted to the imperial center in Moscow,

being trained in the preparation and initiation of hostilities in the spring and summer of 1992. The same imperial forces managed, by means of fierce anti-Moldovan and anti-Romanian propaganda, to involve other foreign forces from outside the Republic of Moldova in this conflict. These are, first of all, groups of Cossacks, citizens of the Russian Federation, who were convinced that they came to the Dniester to defend Russian interests and ethnic Russians "discriminated" by the legitimate authorities of the Republic of Moldova. Apart from these foreign groups, in the Transnistrian conflict, groups of Ukrainian nationalists also fought on the side of the pro-imperial forces, which descended on the region to "defend" ethnic Ukrainians from the "discriminatory" policies promoted by the Moldovan authorities.

The formation of some paramilitary units composed of the inhabitants of the region from the left of the Dniester, founded out of former soldiers from the 14th Army, transferred to the reserve, the arming of these units with military equipment, the ammunition from the respective armed warehouses brought the Republic of Moldova to the initiation of military operations threshold, which on May 19, 1992, with the entry into action of the military units of the 14th Army, degenerated into a Moldovan-Russian war" [2, p.300-301].

In his memoirs, Major General Ion Costaş writes that: "In the years after the 1990-1992 war, with the support of Russia, the Transnistrian leaders created their own armed forces, in which 80% of the officers had combat experience and service in the Russian army (most ex-servicemen of the 14th Army, who receive a military pension from the Russian Federation). In the self-proclaimed republic, there is a Ministry of Defense, which is in connection with the MIA and the military troops of the Ministry of State Security. According to some data, there is the possibility of mobilizing of 25,000 people, but according to other data, up to 80,000. Army structure includes: four permanently deployed infantry brigades, two tank battalions, an artillery division, military aviation, formations of guards, civil protection, Cossacks and construction units. The Ministry of Internal Affairs of Tiraspol has the "Dniester" ("black berets") battalion; the Ministry of State Security has the "Delta" ("blue berets") battalion. The subdivisions are equipped with infantry weapons, hundreds of artillery systems and mine launchers, 28 "Grad" systems, dozens of armored vehicles, around 38 tanks, several Mi-8 helicopters. A series of enterprises dealt with the repair of military equipment and armaments. A military department operates within the University of Tiraspol, based on which officers are trained in various military specialties for further work in the armed forces. Twice a year around 1.5 thousand people are recruited, in 1993 pre-military training banned in 1991, resumed its activity. Tiraspol is militarized; Russia will not withdraw military troops from the territory of the Republic of Moldova, violating the promises made in Istanbul" [3, p.539].

The historian Andrei Groza also wrote about the fact that young people are forced to do service within illegal structures, who stated that "…in this army today citizens of Moldova are called to fulfill their military service, which is contrary to international norms" [4, p.138].

The employees of the MIA of the Republic of Moldova, which monitored the situation during that period, reported regarding the forced incorporation of local residents into the so-called troops of the self-proclaimed DMR. According to the information note presented to the MIA leadership, it appears that "In August 1992, the local authorities of Tiraspol have launched a large-scale campaign of mass dismissal of workers who declare themselves Moldovan… A large number of young specialists, who categorically refused to report to the military records section to participate in combat actions, were released from their positions from the Bakery Factory against the law. Among them are the following citizens: Carauş, Tudoreanu, Pînzari and others" [5]. Probably during that period, the number of people convicted by the "legal organs" of the self-proclaimed DMR for desertion and evasion of military service would have been much higher, but there was no one to carry out the criminal prosecution. All investigators of the Department of Internal Affairs of Tighina refused to engage in separatist structures. This information is published in the books

edited by the separatist authorities from Tiraspol from which we learn that "The period of the years 1992-1994 was very complicated for the investigation bodies. There was a catastrophic lack of professionally trained personnel. The former employees of the investigative departments came under the jurisdiction of the Republic of Moldova and took with them legal literature, typewriters, etc., but left behind stacks of unfinished files, on which the fate of many citizens of the DMR depended" [6, p.146].

It is obvious that the separatists were not interested in the fate of the citizens, but the desire to sentence to custodial sentences those who did not show loyalty to this illicit regime became prevalent. At the same time, the attempts of the constitutional bodies of the Republic of Moldova to defend the rights and freedoms of the citizens living in that region were blocked. It is welcome that a decade after the tragic events on the Dniester in 1992, some public organizations were founded, including the "Promo-LEX" Association which "got involved in various activities related to the field of human rights in the region, helping the inhabitants of Transnistria – Moldovan, Russian and Ukrainian citizens to do justice..." [7, p.205]. As the members of this organization state, "...the illegal regime in the east of the country created its own paramilitary structures, forcibly conscripting citizens of the Republic of Moldova and other states. Simultaneously, the presence of the former 14th Army of the Russian Federation constitutes the most serious threat to national security and human rights in this region. In this way, the Republic of Moldova is unique in the European space, having 3 distinct military structures on its territory (constitutional military forces, illegal paramilitary organizations and a foreign army stationed on its territory against the will of constitutional authorities and international norms)" [8, p.156].

Many citizens believe that the constitutional authorities of the Republic of Moldova acted wrongly in the early 90s when they promised the separatists that "MIA will not start criminal prosecution of people who expressed their desire to join the DMR militia…." [9, p.41-42]. The same thing happened with those who wanted to join the paramilitary structures of the separatist regime from Tiraspol. At the same time, the "law enforcement bodies" of the DMR pursued young people living in the region who refused to fulfill military service. Following the threat that they would be punished by a custodial sentence, they forced them to enlist in the so-called Transnistrian army.

Thus, "On the territory of the Republic of Moldova, contrary to the norms of international law and national legislation, young people are forced to take an "oath" and "serve" an unconstitutional regime, including a foreign state - Russia (Extract from the DMR Defense Law: "I (full name), solemnly swear allegiance to my Motherland – DMR. I swear to strictly respect the Constitution of the DMR, to strictly respect military regulations and the orders of commanders and superiors. I swear to fulfill my military duty with dignity, to bravely defend the freedom, independence and constitutional order of Russia and the Motherland" [8, p.158]. These young people were trained to fight against the Republic of Moldova, and the complaints submitted to the constitutional authorities by the citizens of the Eastern districts on the grounds that they refuse to do military service in illegal structures, practically could not be examined.

The employees of the National Police who lived in that region also faced big problems: "… dozens of employees of law institutions, subordinated to Chisinau, were banned from entering the region even though many of them lived on the left side of the Dniester. Moreover, some chose criminal cases, initiated by the so-called prosecutor's office in the Transnistrian region, without any explanation. Militia representatives have a database of all police employees in the Bender Inspectorate. Employees who work within the premises of the inspectorate are required to have a pass, which allows the police to record any movement of the employee, also having information about the cars available to police employees. Militiamen keep under control any active policeman in law enforcement, even forbidding the wearing of the outfit on the territory to the left of the Dniester" [10, p. 260].

Against the background of these events, the situation of young people on the left side of the Dniester River has become even more complicated: "If they refuse or evade such military service, they are "convicted" by the supposed courts of law in the region or are forcibly "enlisted". Young people, who during the incorporation period intend to leave the region are arrested at illegal checkpoints, later being "escorted" directly to paramilitary units or criminal sanctions are applied to them.

Case study 1, documented by Promo-LEX: Transnistrian border guards at the checkpoint for "military service" evading detained a young man from Tighina. In a few hours, he was escorted to a military unit in the region, where he passed a medical-military commission and on the same day he was forced to submit an "oath of allegiance" to the Tiraspol administration.

Case study 2, documented by Promo-LEX: during the summer vacation (the period of integration in the region), a student from a Chisinau university went to visit his parents in the Camenca District. At an illegal checkpoint, he was accused of "military service" evading, after which he was escorted to a "military unit" in the region. More than two weeks after the incident the parents found out about the son's condition and whereabouts. Information about young people who are to be taken or are on military record, is sent to the "migration service", "border guards" and "militia". They have the obligation to refuse the request to withdraw the residence visa for young "recruits". In the same circumstances, another their obligation is to supervise the activity or movement of young people, subsequently being responsible for their forced "enlistment" [8, p. 158].

Obviously, there were also cases when some people willingly accepted to be recruited into the so-called army of the self-proclaimed DMR. It is about those who wanted to make a career within the force structures of the separatist regime from Tiraspol. Among them, there are also graduates of higher education institutions from the Republic of Moldova, who passed the military training course within the specialized departments. An example is "Iurii Ignatovich Ursul born on June 8, 1973 in the city of Leipzig, GDR, in the family of a military. At the beginning of the 80s, his family moved to Tiraspol, where Iurii graduated from Secondary School No.9. During 1990-1995, he studied at the Chisinau Polytechnic Institute. After graduation, he fulfilled his military service in the armed forces of the DMR. Iurii Ursul started his professional activity in the internal affairs bodies of the DMR immediately after demobilization, in January 1997, as a sector inspector of Tiraspol Department of Internal Affairs" [6, p.25].

During the next ten years, this person ended up holding the position of head of the so-called internal affairs department of Tiraspol. About that period from the information provided by Promo-LEX we learn that "At least 8 young people were announced wanted by the supposed law enforcement bodies, and another 17 – by the "prosecutor's office" of Tighina for dodging embedding. The so-called courts examined over 239 criminal cases for military crimes in 2009. Annually, more than 400 recruits avoid incorporation, choosing to study in Chisinau, the so-called minister of defense from the region mentioned in a press release.

Reservists of the Constitutional Armed Forces, residents of the Transnistrian region, are also forced to "enlist" in paramilitary structures. In particular, it is about the young people who studied in other regions of the country, who perform military service and obtain the booklet at the military departments of the respective educational institutions. To discourage the phenomenon, the administration of the region does not accept, confiscate or destroy the military passbooks issued by the constitutional authorities" [8, p.160].

People who, for religious reasons, do not want to fulfill military service continue to be persecuted. Many of these young people are descendants of the victims of the repressions of the totalitarian Soviet regime, who were deported to Siberia. Speaking about the state of religion during the communist totalitarian regime, Boris Yeltsin writes the following words in his memoirs: "It seems to me that Stalin managed to create the only state in the world, which subordinated and brought even the church to its knees" [11, p.190].

Unfortunately, the persecution of Christians and members of religious cults continued even after Stalin's death. The former head of the KGB of the MSSR, General G. Volkov, wrote in his memoirs about the operative activity of the Soviet repressive bodies against the members of a religious cult in the MSSR, who proudly declared that "Regarding the activation of the "Jehovah's Witnesses" sect in Moldova and taking into account my rich experience of fighting with this sect in the Chernivtsi region, I took over the coordination of the activities of the services in this field. We had the mission to paralyze the illegal activity of the sect, by infiltrating it with our people. Using sect-specific methods, we infiltrated an agent with the alias "Isaev". Later, another agent, "Glazov", who presented himself as a foreign citizen, was also infiltrated. These two assistants of ours began to block the sect's anti-Soviet activity. They stimulated Jehovists to obey Soviet laws and read artistic literature. A great impact on the consciousness of some members of the sect was made by N. Ostrovsky's novel "How the Steel Was Tempered". After reading, some of them left the sect" [12, p.31].

It is clear that the Soviet general in his memoirs does not describe all the barbaric and petty methods used by the Soviet repressive bodies in the fight against Christians and representatives of religious cults. Paradoxically, even in the third millennium young people who are members of religious cults and live in the districts to the left of the Dniester face a lot of problems. The separatist regime in Tiraspol prohibits civil (alternative) service for this category of people: "Thus, young people with pacifist, religious or humanist beliefs are forced to perform "military service" in an illegal paramilitary structure and against their beliefs. If they refuse to "enlist", they are fined or "sentenced" to prison, or wanted for military service "evading" ... Although several religious cults are registered in the Transnistrian region (Orthodox Church, Jehovah's Witnesses, Evangelical Lutheran Church, etc.), their members face serious problems in the incorporation campaign, being forced to perform military service in favor of an illegal regime. The constitutional authorities have not registered substantial efforts to defend the fundamental rights and freedoms of these young people and communities" [8, p.162-163].

Another serious problem that young people face during the so-called military service is their Russification through various methods. Throughout history, not only the communist totalitarian regime, but also the tsarist government took drastic measures to deprive the natives of their national identity and to russify them through military service in the Russian army.

We remind you that Bessarabia was fraudulently annexed by Russia in 1812. Afterwards, "In 1871, Bessarabia lost its status as an oblast or privileged province and became a mere "province" of the Russian Empire. It was henceforth to be governed by Russian laws... And in 1874, mandatory military service was introduced in Bessarabia, as in all of Russia" [13, p.182].

As mentioned by the Romanian author Gh. Dighiș, "The Romanian lad, once entered the service of the tsar, was sent away from his family. The Russian army being organized only in view of internal disturbances is sent to the bottom of Poland, just as Polish soldiers are brought to form garrisons in Bessarabia. In this way, the tsar's government hopes to achieve a double result: on one side the russification of the Poles and on the other the russification of the Romanians. Only the Russian language is allowed in the Russian army, and Romanian soldiers, from the first day of military service, have to endure because they do not know this foreign language. Lately the Russian government has started sending Romanian soldiers from Bessarabia to Siberia and the Caucasus. Here, in these distant provinces of the Russian empire, the Romanian soldier dies of missing his close relatives. For many years, the Romanian soldier does not see his family. As an element of russification, even the army could not serve as much as the Russian government would have liked. The Romanians across the Prut, and especially the peasants, continue to speak the Romanian language" [14, p.19-20].

In addition to the corporal punishment inflicted on the soldiers, there were many barbaric traditions in the tsarist army, which made the service unbearable for the young soldiers. There

were many generals from among the Russian nobility who could not be considered role models for their subordinates. An example is Count A.A. Arakcheyev, to whom Tsar Alexander I entrusted the implementation of important reforms in the army. Some Russian authors write that during his career Count A.A. Arakcheyev repeatedly showed violent behavior towards ordinary soldiers: "witnesses Toli and Mihailovsky-Danilevsky remember how during the front review in Gatchina, in the presence of the heir to the throne, Arakcheyev with particular cruelty personally pulled out the mustaches of some soldiers, and Martos, who knew Arakcheyev very well, declares that at the solemn coronation event of Tsar Paul I, during the front review Arakcheyev instead of limiting himself to a simple observation made to a soldier in the formation, could not control his anger and bit him hard on the ear" [15, p.98].

Over a century after these events, the situation in the tsarist army had not changed. A famous Russian officer, Roman Kondratenko, when he was once deputed for service in the Far East, shortly before the outbreak of the Russo-Japanese War of 1904-1905, wrote to his wife, giving a brief characteristic of a group of Russian officers: "…During the two months I was on the ship, I managed to get to know much better the officers of the regiment which I commanded for four years. The conclusion is as follows. God forbid our children to do military service, not even in the best regiment in the army; limited and arrogant people who overestimate themselves. A lot of them don't have common sense. They always stir the spirits and strain the atmosphere around them, so that an educated and intelligent human can't stand it for long". From this statement we deduce that the Bessarabians passed their military training under rigorous conditions, in a harmful environment, in regions with great ethno-cultural differences in relation to their homeland" [16, p.88].

In such conditions, over 300 thousand of our compatriots, being incorporated into the tsarist army, fought on the fronts of the First World War. Returning to the hearth, many of them rushed into the fight for the defense of national identity, contributing to the execution of the Act of Union of Bessarabia with Romania in 1918. After this event, things changed for the better for the Bessarabians between the Prut and the Dniester, and those on the left of the Dniester were persecuted and forced to enlist in the Red Army. In order to fight with the so-called deserters, the Bolsheviks issued some discriminatory normative acts, starting as early as 1918. Apart from these normative acts, some military structures were developing their own documents regarding the fight against deserters leaving the army. An eloquent example is the disposition issued by the command of the Internal Troops signed on December 7, 1920, in which it is stipulated that:

1. All responsibility for the fight against deserters rests with the military committees and commissions for the fight against deserters, which are subordinated to them.

2. The brigade commanders of the internal troops (or regiments) are members of the governorates' anti-defection committees and bear responsibility for anti-defection actions in the governorate.

3. The joint plan of operations and hunters organized against deserters in the governorates are being prepared based on the information of the county military committees with the direct participation of the brigade commander. In the meanwhile, within these operations, it is necessary to carry out other missions assigned to the internal troops of the governorate, in order to use the forces operating in the same district as rationally as possible.

4. The chairman of the military committee of the governorate asks the brigade commander to provide him with the necessary military forces to fight the deserters. In difficult situations, the presidents of the county military committees can ask for the help of the regiments deployed in the county.

5. The forces deployed to fight deserters by the internal troops carry out the missions drawn up by the representatives of the military committees. The Red Army soldiers from the detachments of the internal troops, equipped with guns and bayonets, constitute the basic force that

provides support to the military committees during the verification of documents, the execution of punishments by deserters, etc." [17, p.286-287].

These troops were used to collect food products from the population, to confiscate goods and for other repressive actions against certain categories of people: "The record of former officers was well established by the Bolsheviks. They managed to do this because they had archival funds and all the military record documents, based on which the lists of all officers in the Russian army were compiled, after which they later searched for them. Thus, all the lists of officers fit for duty according to age, were sent by the State Political Administration bodies to all structures, they organized checks to retain them. In the summer of 1921, filtering commissions were created to carry out a wave of purge of the staff [...]. In 1923, another list was drawn up based on repeated checks, to identify people who served in the White Army [...].

The arrests of the White Guard officers lasted until the end of 1930 – the beginning of 1931, when a new, much more aggressive wave was launched, already directed against the White Guard officers who had joined the Red Army – the so-called "Spring" file, of a larger scale, in relation to the trial against Tukhacevsky and others, about which the public knows almost nothing. At the same time, at the end of 1920, there were major reprisals against former officers who joined the Red Army and those who refused to collaborate with the Bolsheviks. At that time, the SPA was in charge of manufacturing "files", on the fields of professional activity of former white officers" [18, p.390-391].

Family members of soldiers who evaded service in the Red Army were mistreated and killed. As the same author mentions, "…the officer's wife, daughter, mother are thrown into prison and shot. Sometimes this happened because the officer disappeared and was assumed to be with the White Guards; in reality the officer has been dead for a long time, and the relatives are arrested anyway, because they are suspected of complicity …" [18, p.98].

Bessarabians have been subjected to such atrocities since June 1940, when the Red Army occupied Bessarabia. The Soviet occupiers from the very first months were concerned with the training of specialists in the field of population records. They had many tasks given by the communist totalitarian regime, among them the urgent identification of local people who can resist the Soviet government, and finding the soldiers who served in the Romanian army and the tsarist army, as well as young people who can be enlisted in the soviet army, etc. To accomplish these tasks "In October 1940, in the Moldavian SSR, there were organized courses for passport units employees. By the end of February 1941, two promotions had graduated from these courses, training 180 specialists for the passport units. Based on these courses, the militia school in Chisinau is formed in March" [19, p.31].

During this period, many people were sentenced to prison based on politically fabricated cases, and others were forcibly incorporated into the Red Army. Another wave of forced incorporation of Bessarabians into the Soviet army took place starting in the summer of 1944. As the historian Elena Postica mentions, "By July 26, 1944, more than 112,000 men were mobilized in the Red Army, by February 10, 1945, their number reached the figure of about 242,000 men" [20, p.83].

Many locals deserted for various reasons. The repressive bodies carried out an extensive campaign to track down all those who evaded mobilization, but "despite the measures taken by the repressive bodies, during the years 1944-1945 the number of deserters and people evading enlistment in the Soviet army was continuously growing. According to the calculations made by the Unit for the Fight against Banditry of the N.K.V.D., between April 1944 and April 1945, 15,180 deserters from the army and 12,942 people who evaded enlistment were detained in the republic. 440 deserters and 137 citizens who evaded enlistment were sentenced out of the total number of detainees" [20, p.85].

After the end of the Second World War, the totalitarian communist regime started a process

of mobilizing Bessarabians for forced labor in remote regions of Soviet Russia and continued the forced incorporation of young people into the Soviet army. Many locals shied away from mobilization for ideological reasons. The Soviet repressive organs pursued these people, as well as those who carried out anti-Soviet propaganda. In the strictly secret information note sent to the Minister of Internal Affairs of the MSSR, Lieutenant General Tutushkin, by the head of the Internal Affairs Division of the Criuleni District, Captain Bogdanov, on 30.11.1947; it is reported that on the territory of the MSSR "there remained hostile elements carrying out anti-Soviet activity distributing letters with counter-revolutionary and religious content. Such cases were registered in the months of June, July and August in the villages of Peresecina and Coșernița. Later on, during the autumn, while the labor mobilization and recruitment in the Armed Forces of the USSR was taking place, the resident of the village of Peresecina, Criuleni District, Buzu Gheorghe, was openly agitating against the recruitment. As a result, 7 people among the recruits evaded work, and others ran away from the train during the journey and at the current stage they live at home in Peresecina. During the investigations, it was found that Buzu is a former officer of the tsarist army and a member of the Cuzist party. During the war, he remained in the occupied territory and lived in the village of Peresecina. Coordinating the actions with the District Unit of the MSS on this case, we decided that, based on the accumulated materials, we would organize the arrest of the citizen Buzu and his conviction as soon as possible" [21].

For his actions, Buzu Gheorghe was deported to Siberia in 1949 together with the whole family. Unfortunately, later some of our compatriots incorporated in the Soviet Army had to participate in the actions launched by the USSR against Hungary and Czechoslovakia, after which the "international mission" in Afghanistan followed, starting in 1979. The Soviet writer Vladimir Bushin declared himself deeply resentful at the citizens' messages, which accused the leadership of the USSR of aggression against Afghanistan at the end of the 80s of the last century. He tries to justify the crimes against humanity committed by the USSR, offering the following answers to the questions asked by the citizens: "What kind of "aggression" is this, if Soviet military troops arrived in Afghanistan following the multiple requests of the legitimate government, and entered the country through the border checkpoints that were opened for them? Moreover, why should we call this war "colonial", when we coordinated with the Afghan authorities the process of leaving the territory of this country? We willingly left their territory, without even claiming a single piece of land" [22, p.23].

This author, however, does not review the tragedies that have struck the families of soldiers killed in combat during this "international mission", as well as the number of victims among the civilian population of Afghanistan. Unfortunately, the political leadership of the USSR did not learn the lesson of Afghanistan and three years later, the soldiers of the 14th Army provoked the Dniester war of 1992. The true history was falsified in the books edited by the Russian propagandists. Criminals are presented as heroes. In one of such works, the pseudo-historians praise the separatists, who fought against the Republic of Moldova, stating that "The beginning of the 90s is the time of tempering "with fire and sword", and those who went through this period registered their names for always in the golden pages of the history of the Transnistrian militia…." [6, p.36]. Nevertheless, reading other books written by Russian ideologues, we find that in fact the Russian Federation provoked this war in order to restore the former Soviet empire.

Thus, two decades after the conclusion of the ceasefire agreement of July 21, 1992, Alexandr Dughin mentioned the following: "Putin advocates a globally polarized world in which there must be a few centers of regional influence. These ones swinging will keep the balance in the world. The proposed hypothesis must become the source of Eurasian political philosophy and contribute to the reintegration of countries in the post-Soviet space. This is precisely what Putin is paying attention to, who in turn realizes that Russia alone will not be able to fulfill the role of a center of regional influence. Russia needs partners, for the realization of the project of reintegration of the

countries of the post-Soviet space, among which Kazakhstan, Belarus, Ukraine, Moldova, Armenia, Azerbaijan is also desirable, and to penetrate deep into Central Asia, it needs Kyrgyzstan, Tajikistan, Uzbekistan and Turkmenistan. This is the perspective that Russia wants. Consolidating all these forces, our country will turn into an important player, returning in full force to the world arena" [23, p.209-210].

It is certain that in order to carry out these tasks, young people forcibly recruited from the eastern districts of the Republic of Moldova for military service in the so-called Transnistrian army are also trained during military service. Former Soviet army officers who participated in the 1992 struggles against the constitutional authorities are used as instructors. Currently, special pre-military schools are being created in this region, where the "future defenders" of the Russian Federation and the self-proclaimed DMR are being educated. As the commander of such an institution, which bears the name of the executioner Felix Dzerjinski, was appointed "Andrei Valentinovich Knysh, born on February 13, 1972 in Bender. After demobilization from the Soviet Army on April 24, 1992, he worked in the internal affairs bodies of the Republic of Moldova. In 1998, he graduated from the State University of the DMR. Militia colonel A.V. Knysh is a participant in the combat actions of 1992 for the defense of the DMR against the military aggression of the Republic of Moldova..." [6, p.256]. With such "mentors", the students of this school from an early age are educated to fight against the Republic of Moldova. Some of the graduates continue their studies in educational institutions with a military profile in the Russian Federation and the self-proclaimed DMR, others are required to complete military service in due time. All paramilitary structures in the DMR regularly participate in maneuvers with the tactical mission of forcing the flow of the Dniester River and attacking the Republic of Moldova.

Such exercises had gained momentum during the years 2011-2012. Paradoxically, the only institution on the right side of the Dniester that organized tactical applications with the task of repelling a possible attack on the institution by Russian troops and paramilitary units from the DMR was the Academy "Stefan cel Mare" of the Ministry of the Republic of Moldova. Following these actions, some voices from the left of the Dniester and from Moscow began to request the liquidation of this educational institution. Unfortunately, some former KGB officers also supported this initiative. Coincidentally or not, but the financing of the institution was reduced, the salary of the employees was diminished, certain officers were intimidated, countless controls were carried out, "reforms" were initiated with the aim of liquidating this institution. Due to the consolidation of the Academy's team, the situation has been exceeded. The reality is that, even at the current stage, there are still some voices that want to return to the liquidation process of this educational institution.

It is easy to understand that the pro-Russian political parties want this, because the "Police Academy "Stefan cel Mare" made a special contribution to the defense of law and order during the events in the eastern districts of the Republic. Many people do not know the fact that the first to show the desire to defend, with arms in hand, the young state against the separatist war were the students from several platoons, who, out of a patriotic urge, left the hostels at midnight and went as volunteers on the bridgehead in Cocieri (officially, they were forbidden to be armed). They returned to their studies only two days later after the intervention of the Academy leadership and the MIA officials" [24, p.144].

For the participation of officers and students in the battles during the Dniester War in 1992, the Academy "Stefan cel Mare" was decorated with the highest military award, the "Stefan cel Mare" Order, being the only higher education institution that has earned this valuable national distinction. Along the way, in the scientific forums held within the Academy, topics related to the risks generated by the separatist regime from Tiraspol and the Russian Federation were addressed. At such a conference, from 2015, it was reported that "Currently, the educational institutions of the self-proclaimed Dniester Republic organize sports events under the pretext of prepar-

ing athletes for the Olympic Games, pass without problems on the right side of the Dniester and secretly test various forms of attack on strategic objectives of the Republic of Moldova, training future specialists in planning, preparing or starting a war. Such specialists fought in illegal formations on the side of the separatists to occupy the Donbas, Luhansk, Donetsk regions that belong to Ukraine.

Representatives of different generations trained by instructors from the Russian Federation participated in military actions in other regions as well. The situation worsens due to the fact that the educational program in the institutions of the self-proclaimed DMR within the disciplines of history and pre-military training teaches the disciples to fight against the constitutional authorities of the Republic of Moldova and Romania, identifying them as enemies of the DMR" [25, p. 211].

In the same way, young people forcibly conscripted into the paramilitary structures of the self-proclaimed DMR are trained. Those who evade military service face criminal penalties: "Thus, during the years 2015-2018 for crimes related to leaving the military unit (Art. 335 – Desertion; Art. 334 – Voluntarily leaving the military unit; and Art. 336 – Evading military service by feigning illness or other methods), 273 criminal cases were initiated, on the basis of which 281 persons were held criminally liable" [26].

The ECtHR also found cases of violation of human rights in the Transnistrian region. An eloquent example in this regard is the case of Stomatii v. Moldova and Russia. In 2009, Alexandru Stomatii was forcibly incorporated into the illegal paramilitary structures in the Transnistrian region, and in 2010, he was killed. The Russian authorities did not respond to his mother's requests, and the Moldovan authorities suspended the proceedings on the grounds that no person who could be accused of murder had been identified.

Thus, on September 18, 2018, the European Court of Human Rights published the decision in the case of Stomatii v. Moldova and Russia, Application No. 69528/10. The case refers to the death of the applicant's son, while he was performing his mandatory military service in the army of the "Dniester Moldavian Republic" ("DMR"). The Court found that the Republic of Moldova fulfilled its positive obligations towards the applicant's son and that it did not violate Article 2 of the Convention, while the Russian Federation procedurally and materially violated Article 2 of the Convention [27].

Unfortunately, even at the current stage, there are young people who become victims of the repressions of the separatist regime in Tiraspol. Every year, hundreds of citizens of the Republic of Moldova are unlawfully deprived of their freedom for alleged military crimes. Regrettably, the constitutional authorities of the Republic of Moldova cannot intervene promptly to protect the citizens – from the east districts of the Dniester River – from the abuses committed by the leaders of the self-proclaimed DMR. At the same time, the representatives of the Promo-LEX Association mentioned in the reports presented back in 2010 that: "A good part of the blame for this situation definitely belongs to the Government and the constitutional authorities, which for about 20 years did not develop mechanisms and did not create effective tools to defend and guarantee the human rights and citizens of this space. Moldova has not created minimum conditions even for young people from the Transnistrian region for their military registration and enrollment in the constitutional structures. According to the Ministry of Defense of the Republic of Moldova, they can be taken into military records by the constitutional authorities only if they have a residence visa on the territory situated under its control. According to the information of the beneficiaries, in order for the young man to be taken into military records, he must take his file from the separatist administration and bring it to the constitutional authorities" [8, p.158].

Conclusions. As a result of the political uncertainty, the inhabitants of the region have become sure victims of the various problems and situations that people face on a daily basis in this space. Thus, people who refuse to serve an illegal regime are "hunted" and persecuted by the ad-

ministration of the region. Under these conditions, there is a mass discrimination of all the people who live in the territories under illegal control. At the same time, the use by the constitutional military centers of the information and documents drawn up by the separatist administration is illegal and threatens the freedom and safety of citizens in the region.

Thus, the separatist leaders from Tiraspol must be aware that all those who violate the rights of the citizens of the Republic of Moldova, sooner or later, will bear responsibility for the crimes committed.

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VIDEO RECORDING OF STATEMENTS VERIFICATION AT THE SCENE OF THE CRIME

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Summary

In the elaborated article, the authors examine the role and use of video recording methods in verifying statements at the scene of the crime, from the perspective of procedural law. The author highlights the importance of legal norms in the tactics of conducting these verifications and provides tactical recommendations for the application of technical means in this regard.

Following the analysis of various interpretative approaches to procedural law norms and relying on general scientific recommendations regarding criminal prosecution actions, the author structures the necessary activities to be carried out by the person responsible for verifying statements at the scene of the crime. These recommendations aim to improve the quality of recordings and the efficiency of investigation procedures.

Therefore, the article serves as a useful guide for professionals involved in judicial processes, providing them with the necessary tools to properly use technical recording means for the purpose of verifying and clarifying statements of witnesses, victims, aggrieved parties, suspects, or accused individuals about the events of the crime committed in a specific location.

Keywords: video recording, statement verification at the crime scene, tactical recommendations, criminal case, statements.

Introduction. An offensive way to reflect objective reality is to verify statements at the scene of the crime. According to procedural law, "for verifying or clarifying the statements of the witness, the aggrieved party, the suspect, the accused regarding the events of the offense committed in a specific place, the representative of the criminal prosecution body is entitled to go to the scene of the offense together with the person interviewed and, if necessary, with the defender, interpreter, specialist, legal representative and to propose to the interviewed person to describe the circumstances and objects about which he has made or can make statements [1, Art.114 para.(1)].

This probative procedure represents an independent criminal prosecution action. The main criterion that allows the attribution of verifying statements at the scene of the crime to independent actions is the discovery and reflection by this action of data that cannot be obtained otherwise. This feature is highlighted in the complex structure of the action – when the information obtained orally is compared with the data that characterize the particularities of the crime scene. This criminal prosecution action is carried out in case:

– The interviewed person finds it difficult to describe, with small details, the place of the offense, the access and exit routes, the objects existing at the time of the offense, but is able to show and describe all these if he is at the scene of the crime;

– There are divergences in the statements of the participants regarding certain circumstances, objects, access and exit routes from the scene of the crime (to verify the scripted statements, which often cannot take into account objective reality, especially in the case of offenses committed by multiple persons). In other words, verifying statements at the crime scene is carried out to discover new evidence, verify existing ones, identify and eliminate the causes that have led to the appearance of divergences in people's statements, ascertain the circumstances that facilitated the commission of the offense. Moreover, the statement made must be one of those statements which, according to the law or circumstances, lead to a legal consequence. In other words, it is required that the statement has, according to the law or circumstances, probative value and legal effectiveness, being capable of serving, by the mere fact of its making, in bringing about the legal consequence intended by the perpetrator [6, p.183].

Verifying statements at the crime scene allows solving the following tasks, which are of major importance for the investigation of the specific case, namely:

– Discovering the place where the offense was committed, about which the interviewed person made ambiguous statements. This did not allow the criminal prosecution officer to independently identify this place;

– Establishing the itinerary, unknown to the criminal prosecution officer, through which the interviewed person entered or left the scene of the crime;

– Discovering traces of the commission of the offense or material evidence that were not previously identified or known to the criminal prosecution officer;

– Establishing the aggrieved parties and witnesses about whom there was no previous knowledge;

– Determining the participants in the offense;

– Ascertaining the existence or absence of divergences in the statements of witnesses, suspects, etc. Witness statements refer to the accounts provided before legal authorities by individuals who have knowledge capable of aiding in the discovery of truth in a criminal proceeding, knowingly, a term which is equivalent to consciously, having full awareness of the facts. Considering the provisions of Article 312 of the Penal Code of the Republic of Moldova regarding false statements, false conclusions, or incorrect translations, we can say that a person who submits statements does so knowingly or in good faith [5, p.285];

– Establishing and specifying circumstances related to the person's activity at the scene of the crime or the access and exit routes, in case these circumstances are important for the case and cannot be established and specified by other means;

– Determining the circumstances that existed at the time of the commission of the offense;

– Establishing the level of information of the person regarding the scene of the crime, objects, itinerary, actions of the participants;

– Verifying criminal prosecution and investigation versions;

– Ascertaining the causes and conditions that favored the commission of the offense. According to S.Gh. Doraș's opinion, "this probative procedure can also be ordered and carried out for specific purposes such as: unmasking the staged self-incrimination, revealing false witnesses, establishing the circumstances that favored the commission of the offense, other circumstances necessary for the fair settlement of the case" [2, p.157; 8, p.219-227]. We underline this statement, because it is essential to understand that people who were not directly involved in the commission of the offense will often display incompetence, especially regarding the modus operandi at the scene of the crime.

The purpose of the article consists in reporting the tactical-criminalistic aspects of video

recording of the process of verifying or specifying the statements, from the perspective of procedural law.

Methods and materials applied. To achieve the proposed purpose, given the specificity and complex nature of the investigated theme, the following research methods were used: logical, systematic, and comparative. The research undertaken is based on the study of doctrine and procedural criminal law.

Discussions and results obtained. Verifying statements at the crime scene represents a means of investigating the issue concerning the events of the offense. The interviewed person is proposed to describe the circumstances and objects about which he has made or can make statements.

"Although the tactic of the probative procedure in question differs from case to case, depending on the nature of the offense, the procedural status of the person whose statements are to be verified, theory, and criminalistic practice have specified the substantive elements of the algorithm of the respective procedural activity" [2, p.409]. "As in the case of applying other probative procedures in criminal prosecution, in verifying statements at the scene of the crime, all three forms of fixation are applied: respectively verbal, expressive-demonstrative, and graphic. The verbal form consists of drawing up a report on the verification of statements at the scene of the crime, in which the situation and conditions in which the verification of statements of one or another person was carried out, the order in which the respective activity took place and its results are fixed. If traces of the offense or other objects with probative value were found at the scene of the crime or in its surroundings, this fact will be recorded in the report, and the traces and objects found will be collected and fixed in the order provided for in the legislation in force and criminalistic tactics. Finally, the questions asked by the criminal prosecution officer and the answers of the person whose statements are being verified will be recorded here" [2, p.411].

The expressive-demonstrative form provides for the application of judicial photography and video recording to fix the process of verification and the results revealed. "Video recording is the preferred means of fixation of verification" [7, p.233], because it allows:

– „The simultaneous recording of the image and (sound) of speech on the same material support.

– The recording and playback with a high degree of objectivity of the statements and actions performed by the person at the scene of the crime, the intonation, the emotions, the person's reaction.

– Ensuring the possibility of delimiting and demonstrating the role and contribution of each participant in the commission of the offense, an important fact if the offense was committed by a criminal group or organization.

– Recording the conditions in which the verification activity took place, the logic of the actions, the order of its conduct, the legality, and the effectiveness of the tactical measures taken.

– Ensuring respect for the rights of those involved in the verification activity, preventing the use of illegal forms such as inducement, psychological or physical coercion, misleading, instilling the direction of movement, etc.

Video recording is recommended to be used in situations where it is assumed that the person whose statements are being verified will present little-known routes (especially when the accuracy of these statements is crucial) or will perform complex actions, etc." [4, p.66-67].

It is incorrect to assume that if the verification of statements at the scene of the crime is done correctly, it will not be difficult to accurately reflect through video recordings what happened at the crime scene. Although it is true that the verification of statements can sometimes take several hours and that it is not feasible to continuously film throughout this time, the assertion that it is sufficient to record only "the main and most relevant moments" [11], is debatable. This approach can lead to the loss of important details and the undervaluation of aspects that may

seem less significant at first glance, but may have important consequences in the conduct of the investigation or in the subsequent evaluation of the video evidence [12, p.204]. Additionally, the subjective selection of moments for recording can lead to accusations of bias or challenges to the objectivity of the video evidence. Therefore, it is important for the investigation to be recorded as comprehensively as possible, and the decision on what to record should be made based on the specifics of each case and the legal and ethical requirements.

Taking breaks in video recording is not a recommended practice. This is justified only if the person whose statements are being verified has finished narrating and demonstrating in one location and declares the need to move to another location, and the recording of the movement process is irrelevant to the criminal case. In this case, the video recording should document the cause and duration of the break.

To understand what needs to be recorded on video, the on-site investigation report and its annexes (photographic chart, sketch) and other relevant materials will be studied. The results of the crime scene investigation are compared with the information obtained during the interview of the person whose statements are to be verified.

As is known, a fundamental aspect in planning an investigative action is the identification of the so-called "reference points", which will serve as reference frames in the process of verifying statements at the scene of the crime.

"The nature of these 'reference points' can be very diverse: the place where the participants met before the commission of the offense, the place where traces were discovered, the routes of movement of certain persons, the points where relevant objects were or are located, etc." [10, p.368].

Based on the case materials, the investigator identifies these "reference points" and plans the methods of investigation and recording of these points.

After the criminal prosecution officer has established what and in what order should be filmed during the verification of statements, he must thoroughly instruct the specialist who will perform the video recordings about the general objectives of the future filming and about the specific tasks for each "reference point" during filming.

As mentioned earlier, neither the comprehensiveness of the collected materials nor the obvious clarity of the objective of the future filming should influence the decision of the criminal prosecution officer to inspect preventively, together with the specialist, the place where the criminal prosecution action will take place (of course, if this place is known).

"As for verifying statements at the scene of the crime, this rule is of particular importance, as the essence of this action consists in comparing the different statements of the person with the objective reality" [8].

Thus, the more attentively the criminal prosecution officer and the specialist study the real environment, the easier it will be for them to fix it through video recording. Being at the scene of the crime, it will be easier for them to imagine under what conditions the filming will take place, what objects need to be filmed and from what angles, what needs to be filmed in the foreground, in which case an orientation or detail shot will be necessary.

Special emphasis should be placed on selecting the filming points. The choice of filming locations depends primarily on how intensively and from which direction the objects and areas of the terrain – space proposed for filming – will be illuminated.

In general, the aspect regarding the desirability of preparing a written plan for the future video recording, mentioned earlier, has a certain specificity in preparing for statement verification, determined by the nature of this criminal prosecution action. It can be recommended to prepare at least one plan (sketch) of the terrain for the planned action, even in the most primitive way. On the plan, it is convenient to mark the objects to be filmed, the filming points, etc.

Sometimes, the criminal prosecution officer does not have detailed information about the

location where the statement verification will take place. It is clear that in this case, the planning possibilities are limited. For example, from the defendant's statements, it appears that he committed a theft from an apartment in a house, the address of which he does not remember. The defendant cannot provide details about the location of the crime, but when he gets there, he hopes to find the house and remember the circumstances of the theft. Thus, it is impossible to examine the location of the statement verification in advance and plan the video recording process. In the presented case, for the specialist to better understand his task and to accurately perform the video recording, he must be explained what needs to be captured: the route indicated by the defendant to the house and the reference points along this route; the moment when the defendant points out the house where the theft took place, how he entered the room; the defendant's indication of specific places from where the goods and valuables were taken, and so on.

Once the objectives and specific tasks of the video recording have been established, certain organizational aspects need to be addressed.

The criminal prosecution officer and the specialist need to establish a signaling system in advance, which will allow them to communicate. During the video recording, the specialist may often be at a significant distance from the other participants in the statement verification, and it may be difficult, sometimes even impossible, for the criminal prosecution officer to give instructions. Therefore, it is important to establish in advance signals (expressed through gestures), which indicate, for example, the start of filming, changing the filming location, etc. In turn, the specialist also needs to have the possibility to signal the criminal prosecution officer.

Since statement verification at the scene of the crime can take time, it is advisable to start as early as possible to take full advantage of the daylight suitable for filming. In the same context, it is recommended to carry out the action only during those hours when there is little crowding at the location where the statement verification will take place or along the route to it.

Outdoor video recordings are also influenced by weather conditions, so if bad weather is expected, this action should not be organized. Similarly, there may be situations that require statement verification indoors, where artificial lighting is necessary. In such cases, to avoid slowing down the pace of statement verification, it is necessary to engage an assistant who, at the direction of the person filming, will move and set up the lighting equipment.

Participants in the criminal prosecution action must be notified in advance that the process will be video recorded, as some individuals whose statements are being examined may refuse to participate, citing that they do not want to be filmed. In these circumstances, detailed and pre-prepared information is indispensable to communicate to the participants that the procedure is mandatory and essential for the smooth conduct of the investigation.

Video recording during statement verification at the crime scene requires adherence to some recommendations. At the beginning of the video recording, after the criminal prosecution officer has explained the rights and obligations of all participants in the action, they will inform them that it is being recorded (mentioning the camera model, the recording medium, and other technical details), and it is mandatory to clarify whether the person whose statements are being verified is prepared to make statements.

Then, the criminal prosecution officer explains in detail the course of the investigation action and informs all participants about their tasks and responsibilities. The introductory part of the recording ends when the starting point is brought to the attention of the person whose statements are being verified.

The pace of statement verification at the scene of the crime should not be too fast so that the specialist has time to familiarize themselves with the environment and record everything that is necessary. However, it is not recommended to excessively prolong statement verification due to video recordings, as this could disrupt the natural flow of the action, and the attention of the participants could be distracted.

To achieve more efficient recording and, especially, to choose filming points, the criminal prosecution officer must obtain information from the person whose statements are being verified, about the location they are supposed to advance further towards, some time beforehand.

It is crucial to clarify the possibility of repeating the verification of statements at the scene of the crime. We consider it inappropriate to reiterate certain activities already performed by the person whose statements are being verified, especially in situations where an episode related to the recognition of objects, areas of terrain, or premises needs to be filmed. Repeating these actions for the purpose of video recording is completely unacceptable, as the moment of recognition has already passed.

In addition to organizational elements that need to be recorded on video (legitimization of the criminal investigation officer, presentation of participants, consent of those being interviewed, date and time of commencement, etc.), when conducting the verification of statements at the scene of the crime, it is necessary to establish:

• *the route taken to the scene of the crime* – if the statements being verified are related to the investigation of a certain route of a certain length and transportation was used for this purpose, it is necessary to record the conditions under which the verification of statements took place. The filming must be done in such a way that, upon viewing the final video recording, it is clear what mode of transport was used, where the person whose statements are being verified was located, if the route is visible from that location, where the criminal investigation officer and other participants in the action were located. It is mandatory to record the landmarks mentioned in the statements, as well as the clearly visible objects whose individual characteristics do not present difficulties (for example, a movie theater, a bus stop, a distinctive building, an intersection).

In case the verification of statements at the scene of the crime begins from the office of the criminal investigation officer and transportation to the scene of the crime is done by vehicle, the cameraman will be positioned behind the driver and the person whose statements are being verified, so that the itinerary on which the vehicle is traveling is visible through the window.

In case of transportation by vehicle, the driver is obliged to follow all the instructions of the person regarding the direction of travel (within the limits of traffic regulations). The driver must be informed of this in advance. The person whose statements are being verified will be placed on the front seat of the vehicle involved in the action. In this case, as a means of protection, the suspect, defendant may be handcuffed to prevent escape. It will be more convenient for them to orient themselves, give explanations, and direct from the front seat. It is not excluded that the suspect, defendant may also be in the back seat during the verification of statements at the scene of the crime. Although positioning the handcuffed person in the back seat is more acceptable and effective, it should not be forgotten that they may influence the driver or intentionally cause a traffic accident to escape.

If the participants in the criminal investigation action travel the investigated route on foot, according to the rules for conducting the verification of statements at the scene of the crime, the person whose statements are being verified walks ahead of the other participants in the action. This must be periodically recorded through video filming to visually present the progress of the criminal investigation action later on. In the case of walking, the cameraman must position themselves laterally to the trajectory of the participants in the criminal investigation action. The dynamics of what is happening at the scene of the verification of statements are reproduced by creating diagonal image compositions. Movements within the frame should proceed in a straight line, connecting the opposite corners of the frame (for example, the top left and bottom right). In one corner, the person whose statements are being verified is positioned, while in the other corner is the object towards which they are moving. It is rational for the video recording at the scene of the verification of statements to be carried out from the same points from which the on-site investigation was filmed, for better comparison of circumstances and conditions.

"The person whose statements are being verified is granted full independence and initiative in choosing the itinerary, direction of travel, and description of objects and circumstances. The criminal investigation officer is obliged to create conditions to ensure the independence of the actions carried out by the person whose statements are being verified during the journey. Creating these conditions allows the criminal investigation officer to assess the knowledge that the person whose statements are being verified has regarding the scene of the crime. During the verification of statements at the scene of the crime, no participant has the right to interfere with the statements made by the person, correct them, or whisper. In case if such situations arise at the crime scene, the verification of statements loses its probative character" [3].

• *positioning of participants* – "the optimal placement of participants generally represents a tactical recommendation that serves as a background not only for obtaining objective results but also for avoiding procedural errors. When deciding on the placement of participants in the verification of statements at the scene of the crime, the criminal investigation officer must be guided by the following:

a) the placement of participants should not intimidate the actions of the person whose statements are being verified, because there may be situations when the suspect, defendant will refuse the statements made during the verification of statements at the scene of the crime, and the argument used by them can be that they were constantly handcuffed alongside a police officer. Specifically, the police officer escorted them on the itinerary and especially at the scene of the crime;

b) to exclude escape or attempts on the lives and health of participants (especially those armed);

c) to provide all conditions for fixing the results of the verification of statements at the scene of the crime. The person technically recording the action is not recommended to move ahead of the person whose statements are being verified. This fact can be interpreted as suggesting the itinerary" [7, p.227];

• the circumstances and objects about which the person makes statements;

• the questions asked – "if the person provides vague or unclear statements, the criminal investigation officer may suggest that certain elements of the statements, which are important for finding the truth, be detailed and specified. The criminal investigation officer must strive to obtain detailed statements to correctly understand and appreciate the actions committed at the scene of the crime" [7];

• the objects and documents discovered that may serve as evidence in the criminal case – during the verification of statements at the scene of the crime, the cameraman, at the direction of the criminal investigation officer, must continuously monitor the person whose statements are being verified. This allows conclusions to be drawn regarding whether:

• the person is firm in their actions;

• the emotional state in general and at certain moments of the verification;

• what caused the emotional change.

The introductory part ends when the criminal investigation officer instructs the person whose statements are being verified, where to proceed along with all participants [9].

Video recording at the scene of verifying statements. Upon arrival at the scene of verifying statements, it is advisable to first film a general view (orientation shots) of the territory or the room where the verification of statements will take place. This will allow, upon later viewing of the video recording in court, a better understanding of the direction of movement of the participants in the action, the location of certain objects explained, the exact place where objects and documents that may serve as evidence in the criminal case were discovered, etc.

In the opinion of author Novikova L., „during the video recording of verifying statements at the scene of the crime, the following rules must be followed:

• Each „reference point" must be filmed in such a way that, when viewing the video recording, there is no confusion between „reference points";

• The recorded material must clarify what each „reference point" consists of;

• The entire recording must be edited to easily follow the relationship between the „reference points";

• The video recording must allow the evaluation of the conditions under which the criminal investigation action took place;

• If the verification of statements was conducted in the same location with multiple persons, the video recording must facilitate the objective comparison of the information obtained from these persons. Comparing the information from different persons, captured in separate video recordings, is easier if the same landmarks are captured in these recordings" [11].

Concluding the points mentioned earlier, we emphasize that the working stage of verifying statements at the scene of the crime will always achieve its stated purpose if, in addition to proper preparation, video recording of the following elements is used each time:

Respect for the continuity of actions in conducting the verification of statements at the scene of the crime. „Respecting a certain continuity in the actions performed during the verification of statements is done only if the action is directed by the prepared criminal investigation officer. The action begins with the proposal to describe or indicate the itinerary traveled during the commission of the crime, the landmarks. Arriving at the indicated location, the criminal investigation officer specifies whether the actions were observed from there or whether the crime took place there. In case of an affirmative answer, usually, it is specified which features were recognized at the location and if they have changed. Obtaining answers to the questions asked, the criminal investigation officer proposes to the person to describe, explain the actions committed. The criminal investigation officer must control that the person whose statements are being verified moves ahead of the operational group for recording and explains their own actions or those witnessed, indicating the objects they are orienting towards, specifying the direction of movement in advance; to make stops to explain certain facts that are important for the criminal investigation" [7, p. 229-230].

Combining the process of showing the way to the crime scene with the description of circumstances and objects. Combining the person's statements with the circumstances at the scene of the crime is a mandatory action in conducting the verification of statements at the scene of the crime. The person must provide statements both during the journey along the route and during intentionally made stops. By describing and demonstrating, attention will be drawn to the participants about the circumstances of the scene of the crime, which were previously mentioned in their statements. The criminal investigation officer may ask verification, clarification, or specification questions.

Giving statements at the end of the action and recording them is not rational, as in this case, the purpose of the action is lost. Combining statements with the ambiance of the scene of the crime allows the person to recall some details, thus complementing previous statements.

Detailing statements. "If the person provides vague, unclear statements, the criminal investigation officer may propose that certain elements of the statements, which are important for finding the truth, be detailed and specified. The criminal investigation officer must strive to obtain detailed statements to correctly understand and appreciate the actions committed at the scene of the crime. Thus, it is advisable to establish the positioning of perpetrators, the nature of the actions performed to understand the role of each in the commission of the crime" [3].

At the end of the planned actions, the participants return to the premises of the criminal investigation authority for drafting documents. During this time, according to the announcement made by the criminal investigation officer, video recording is interrupted and resumed after the minutes are drawn up and the filmed materials are reviewed.

The final part of the video recording must include confirmation from the participants regarding the correctness of the recordings, if applicable, comments, objections regarding the action they took part in.

Conclusions. The application of video recording in verifying statements at the scene of the crime is essential for ensuring effective and impartial criminal prosecution. Respect for the continuity of actions and the proper integration of statements with the circumstances at the crime scene are key elements in the investigation process. Detailing statements and their subsequent confirmation are necessary to obtain a complete and accurate picture of events. By applying these practices and relevant legal norms, the process of verifying statements at the crime scene becomes more transparent and reliable, contributing to ensuring justice and protecting the fundamental rights of the parties involved in the judicial process.

Although video recording is recognized as an additional technical means of recording the verification of statements at the crime scene, in our opinion, based on the provisions of Art. 114 para. (1) and Art. 115 para. (1) of the Criminal Procedure Code of the Republic of Moldova, a video recording represents a mandatory means of recording the verification of statements at the scene of the crime. In this regard, the provision of Art.114 is expected to expressly regulate that video recording will be applied in the process of verifying or specifying statements.

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THE CRIMINOLOGICAL CHARACTERISTIC OF CORRUPTION OFFENSES COMMITTED BY PUBLIC OFFICIALS WITH SPECIAL STATUS

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***Abstract:** The paper highlights the peculiarities of investigating corruption offenses committed by public officials with special status. Investigating corruption offenses committed by public officials with special status involves distinct challenges, such as latency in their official reporting due to employee solidarity. These officials use specialized knowledge and skills to commit and conceal the offenses, complicating investigations. The investigative process often faces strong opposition from the perpetrator and his colleagues, who try to influence the investigation outcomes. The importance of criminological characteristics in these investigations is essential for understanding and addressing cases correctly, ensuring the efficiency and integrity of the criminal process in the face of complex challenges.*

***Keywords:** corruption, public official with special status, criminological characteristic, criminal case.*

Introduction. The issue of corruption has always existed in the Republic of Moldova, and the fight against it is conducted at a national level. However, corruption has reached a new qualitative level today. Corruption has become widespread, penetrating all spheres of Moldovan society and "has a destructive impact on the functioning of all state power structures, including law enforcement agencies" [8, p. 3].

The significantly high level of corruption paralyzes the state's efforts in combating crime, generates distrust from the population towards law enforcement officials, and questions the social utility of law enforcement structures.

The purpose of the article is to highlight specific features of the criminological characteristic of corruption offenses committed by public officials with special status.

Methods and materials applied. In order to achieve the proposed objective, considering the complexity and specificity of the topic addressed, logical, systematic, and comparative methods were used. The studies conducted were based on the analysis of doctrine.

Results obtained and discussions. Investigating corruption offenses committed by public officials with special status is similar to investigating other types of offenses committed by public officials, but a series of characteristics of this category of offenses allow us to say that they still differ:

- Corruption offenses committed by public officials with special status, employees of the law enforcement agency, are characterized by high latency. According to experts, currently, only 20-25% of the offenses committed by them are included in official statistics [9, p. 4]. The latency issue is caused by corporate solidarity and the hidden resistance of superiors to hold their employees criminally accountable, as superiors are responsible for the illegal behavior of subordinates.

- Public officials with special status have specific legal training, knowledge, and skills acquired in the course of their professional activities. They are familiar with the methods and techniques of special investigative activities, which leads them to use sophisticated ways of committing and concealing criminal activities. - Investigating offenses committed by public officials with special status is almost always accompanied by strong opposition from investigative authorities,

both from the perpetrators and from their colleagues, including their superiors. The counteraction can be prepared even before the discovery of the offense, namely in the process of committing the criminal acts themselves, and then can be implemented during the investigation to avoid criminal liability. For example, before committing the act of corruption, the perpetrator may ask the person to write a receipt stating that they borrowed a large sum of money from him. In this case, the method of concealing traces is an element of the method of committing the offense. During the investigation, the entire counteraction system becomes active. Pressures can be exerted on victims and witnesses, fictitious alibis and false evidence can be created. Colleagues can provide various information regarding the criminal case, as well as take many other actions aimed at terminating the criminal case.

The above, of course, does not exhaust all the issues that arise in the process of investigating corruption cases committed by public officials with special status and indicates that investigating these categories of offenses requires a high qualification of law enforcement officers, based on special knowledge and professional experience. However, despite the relevance of the issue, aspects related to the methodology of investigating corruption offenses committed by public officials with special status have not been sufficiently studied to date. The specialized literature, especially domestic, available, does not contain relevant methodical recommendations.

It seems that the current situation places forensic science in the task of intentionally studying the specifics of investigating offenses in this category, namely: the peculiarities of initiating criminal proceedings, the interaction of the law enforcement body and the subdivisions involved in preventing and combating acts of corruption, the methods of using specialized knowledge most efficiently, investigative tactics, typical situations that arise during the investigation, as well as equipping practitioners with the knowledge and skills necessary for investigating offenses in this category.

Regarding the structure of the particular forensic methodology for investigating corruption offenses committed by public officials with special status, it should be noted that this question is also among the debatable ones in the specialized literature. Various authors have defined the structure of particular forensic methodology differently, including various elements.

Starting from the position of the author Gavlov V. [5, p. 19-20], we consider it possible to identify the following components in the structure of the forensic methodology for investigating corruption offenses committed by public officials with special status, as a fully structured and comprehensive methodological system:

1. The forensic characteristic of committing corruption offenses by public officials with special status.

2. The forensic characteristic of investigating corruption offenses committed by public officials with special status.

3. The forensic characteristic of judicial research of corruption offenses committed by public officials with special status.

The components defined above are closely correlated, as "the forensic characteristic of judicial examination of criminal cases, starting from the forensic characteristic of offenses and their investigation, at the same time focuses on them, on their informational basis" [6, p. 50; 7] and cover the characteristic of the activity from the commission of illegal actions by a corrupt employee of the internal affairs bodies to the adoption of a final, legal, and justified decision regarding this fact. It seems that the development and improvement of such a methodology will increase the efficiency of the law enforcement body.

According to the aforementioned structure, investigating corruption offenses committed by public officials with special status, the initial element of it is the forensic characteristic of the category of offenses in question, which includes a system of generalized objective data regarding the characteristics of the committed and investigated offenses.

The forensic characteristic of the category of offenses in question, which includes a system of generalized objective data regarding the characteristics of the committed and investigated offenses, reflects the most significant features, distinctive properties of committing this category of offenses [4, p. 564] Thus, Vozgrin I. notes that the forensic characteristic serves as an initial source of information for the law enforcement officer in organizing investigative activities, information for developing versions and searches, establishing the main directions for preventing, detecting, and investigating offenses, the motives and purposes of offenses, and solving other complex issues existing within the criminal case investigation. In this sense, the forensic characterization of offenses occupies a prominent place in the tactical arsenal held by the law enforcement officer [3, p. 22-24].

The importance of forensic characteristics in investigating offenses cannot be overstated. Understanding forensic characteristics allows for a better understanding of the essence of a particular event under study, which is especially important in the initial stage of the investigation under conditions of information deficit. This knowledge, being essentially a typical probabilistic model for orientation in the investigation, enables a better understanding of the role and place of the discovered facts, their interrelationships, to navigate in the specific investigation situation, to choose the most optimal course of action, to determine the investigative directions, and the ways to search for other significant forensic information. The importance of the forensic characteristic is particularly significant in investigating high-latency offenses, such as corruption offenses committed by public officials with special status.

Summarizing the opinions of specialists in the field [2, p. 57; 11, p. 23; 12], it can be concluded that the forensic characteristic of corruption offenses committed by public officials with special status can be defined as a system of typical forensic features of this category of offenses, manifesting in correlations between its elements, revealing the particularities of how, the mechanism, and circumstances in which public officials with special status commit corruption offenses, the formation of traces, the object of the offense, providing an insight into the personal characteristics of the offender and other circumstances related to corrupt activity in the public domain (law enforcement agencies), aiming to ensure the efficiency of the investigation and prosecution of such criminal cases. To determine which elements should be included in the structure of the forensic characteristic of corruption offenses committed by public officials with special status, it is necessary to decide whether each element is specific and significant in the forensic aspect of investigating this category of offenses. It is primarily about a significance that allows, based on the inclusion of a certain element of criminal activity in the forensic characteristic and establishing its relationships and dependencies with other elements, to forecast the optimal directions of criminal investigation during the investigation of a particular group of offenses [10]. This approach allows, first of all, the delimitation of the element that is important for the development of an investigation methodology as a set of practical recommendations, from other elements that do not fall within the scope of forensic study or are not relevant to the specific group of offenses being investigated.

The purpose of determining the optimal number of elements in the forensic characteristic of corruption offenses committed by public officials with special status, the place and value of each of these can serve the principle of completeness of the investigation. Excessive limitation of the number of elements in the forensic characteristic will not be able to ensure adherence to this principle, as some important aspects may remain unclear. At the same time, an unjustified expansion of these elements could complicate the methodology of the investigation. Taking into account the above-mentioned aspects, in our opinion, the elements of the forensic characteristics of corruption offenses committed by public officials with special status should include: information about the typical personality traits of the corrupt employee; information about the typical personality traits of the victim; data about the environment in which the offense was committed; data about

the preparation, commission, and concealment of the offenses, the mechanism of trace formation at each of these stages, as well as the object of the offense. The choice of these structural elements is explained by their essential differences from similar elements of the forensic characteristics of other types of offenses and their crucial importance for investigating the category of offenses in question, which is manifested in the following:

The personality of the employee who has committed a corruption offense is of paramount importance in the forensic characteristic of offenses in this category, as qualities such as age, functional position, and psychological traits determine the scope of committing the offense, the mode of preparation, commission, and concealment. Committing such a corruption offense is impossible without the perpetrator utilizing the opportunities offered by their status and duties.

The outcome of the entire investigation often depends on how deeply the significant forensic personality traits of the "victim" are studied in this category of cases. Depending on the circumstances in which they and the employee met, the motives that led the latter to show criminal interest towards the victim, and the information characterizing the victim's personality, information about the offender, their motives and goals, the object, mode, place, and time of committing the offense can be obtained. It should also be considered that the person from whom the corrupt individual illegally obtains benefits and advantages, both material and non-material, although appearing to be a victim, is not so, as they are also committing an offense.

The peculiarities of the environment in which offenses in this category are committed are primarily determined by the specific field in which they are perpetrated, i.e., in the context of performing functional duties. This primarily includes the order established by normative acts and the actual order in which public officials with special status exercise their duties. Research results show that the majority of corruption offenses were committed during the performance of their official duties (83.6%). The conditions of the environment determine the content of how the corruption offense is committed and, through this, the mechanism of trace formation. The nature and specificity of the professional duties performed by public officials with special status determine the commission of offenses within a group (32.7%). In this case, the commission of offenses is influenced by the perpetrators' desire to carry out their criminal plan by utilizing the capabilities of all group members, and the number of participants may increase, including those in the organization's leadership (16.3%).

The specific way in which crimes of this nature are prepared, committed, and concealed is determined by the field of activity, the functional position of the perpetrator, the general situation in the state, the local situation in the region and subdivision in which they operate, the object of the offense, as well as the personal qualities of the perpetrator. Among these are: legal knowledge, professional experience, and their position of authority. Well-informed about the means and methods of detecting and investigating crimes, they take measures for meticulous preparation, planning, clever masking, and concealing traces of their criminal activities. For example, when planning an act of corruption, they may prepare documents in advance to confirm that the person engaging in active corruption was under operational surveillance and that the process of transferring money, goods, etc. was an operational experiment conducted for the purpose of documenting the act of corruption. The wide range of functional responsibilities determines the content of the illegal actions of public officials with special status. The use of a uniform as a symbol of state authority is a factor that stimulates illegal behavior and, to some extent, facilitates the commission of the crime.

5. The nature of the object of corruption committed by a public official with special status will not differ substantially from the object of a corruption offense committed in another field. However, establishing this undoubtedly plays a significant role in investigating this category of offenses, as it can indicate the nature of the relationships between the subjects of corrupt relationships and can determine the manner in which such acts are committed and concealed. It should

also be considered that a corrupt public official with special status may not receive any material gain for their services, acting based on other interests and obligations that are important to the corrupting structure.

It is important to recognize that, in developing the system of elements of the criminalistic characteristic, the main focus should not be on listing them, but on the meticulous analysis of the interdependent relationships between them. As Belkin R.S. emphasizes: "...the criminalistic characteristic has significant practical significance only when the correlational links between its elements are followed...". The significance of the criminalistic characteristic of offenses lies primarily in the fact that, in the initial stage of investigating offenses, when in most cases there is a lack of initial information, due to the stable correlational links between different elements, it allows for the development of well-founded versions regarding the unidentified elements and circumstances. In this context, Yablokov N.P. rightly notes: "Knowing a single element in this system of interdependencies can reveal the entire chain. In particular, identifying the existence of one element in the interconnected chain in the investigated offense can indicate with a certain degree of probability the existence of another unidentified element and can determine the direction and means of searching for it" [13, p. 12].

All the structural elements of the criminalistic characteristic of corruption offenses committed by public officials with special status form a complex system of interconnected and interdependent data that correlate with each other. This is explained by the specific authority duties of the subjects of the offenses, their rights, interests, and professional activities. Identifying and investigating these interconnections represents the main task of studying the criminalistic characteristic of different types of offenses. The importance of such a study is determined primarily by the practical activity of investigating corruption offenses, as, in conditions of limited information about the criminal event, knowledge of some elements of the criminalistic characteristic allows for the assumption of the existence of others, which can be used to develop investigative versions regarding the event under investigation and determine the optimal direction of the investigation. Interdependence can be observed between the initial information about the committed or prepared offense and the manner of its commission, including the inevitable elements of concealment, which are often very professional. The criminal plan of the corrupt individual, in most cases, is formed within the scope of their professional duties. The interests of the corrupt public official with special status are often closely linked to the selfish interests of the beneficiary. Given the complexity of the topic at hand, it will be further explored in subsequent scientific works that aim to analyze the characteristic elements of offenses committed by public officials with special status in a rigorous and comprehensive manner.

Conclusion. In conclusion of the above, we can state that investigating cases of corruption committed by public officials with special status represents a complex system of establishing all the connections and circumstances associated with the committed offense, the participants, and other interdependent elements. Criminalistics, in accordance with its role and objectives, must provide practical assistance in investigating offenses. The development of the criminalistic characteristic of corruption offenses committed by public officials with special status serves as the foundation for the elaboration of methodological recommendations for a successful investigation and the establishment of truth in criminal cases in this category.

It is important to mention that any offense represents a dynamic system that changes according to scientific and technological progress, conditions that favor the commission of offenses, and other factors. Therefore, the criminalistic characteristic of corruption offenses committed by public officials with special status must be constantly updated and developed.

Thus, the development and application of the criminalistic characteristic play a crucial role in combating corruption and ensuring justice, providing the basis for the efficient disclosure and punishment of the guilty parties.

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CRIMES COMMITTED BY THE SOVIET MILITARY AGAINST GEORGIANS DURING THE PROTESTS OF 9 APRIL 1989

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Summary

The article analyses the events that took place in April 1989 in the city of Tbilisi, when the totalitarian Soviet communist regime instructed the military of the Soviet Army and the Internal Troops to apply special means and physical force with particular cruelty against the demonstrators. As a result of the violent actions of the Soviet military, dozens of Georgians, young and old, women and men lost their lives on 9 April 1989. According to the authors, information about the massacre was concealed, but under pressure from international commentaries the USSR leadership was forced to provide brief information about the violent intervention of the military, distorting the truth as usual. Finally, it is pointed out that this tragic event, along with others, demonstrates that the Soviet military were complicit in all the crimes committed by the Soviet regime against the representatives of various peoples, for which they must be demystified.

Keywords: Georgia, Tbilisi, April 1989, protest, totalitarian regime, Soviet military.

Introduction. The accelerating dynamics of events taking place in the world at the beginning of the third millennium continue to cause concern about the violation of the rights and freedoms of citizens living in countries with authoritarian regimes. As a rule, the political elites of these countries report that they respect democratic values and ensure the security of their own citizens, but in reality these are just empty declarations. As author Leah Levin noted at the end of the last century: 'Human life and human dignity have been neglected throughout history and continue to be neglected today. Yet the idea of rules common to all citizens dates back centuries... But discrimination continues to exist because of ignorance, prejudice and aberrant doctrines that try to justify inequality" [1, p.16].

It is regrettable that the citizens of the former Soviet republics, who gained independence at the cost of great sacrifices in the early 1990s, are in such a situation. In this context, countries with democratic traditions in the world are watching with concern the protests taking place in Georgia at this stage. Multiple public gatherings in which society expressed its disagreement with the ruling party's initiative to pass a controversial law took place during April 2024 in the city of Tbilisi. This dubious piece of legislation on the fight against "foreign influence" brought out a large num-

ber of members of public organizations, opposition parties and prominent Georgian personalities.

Protests often broke out spontaneously, as in April 1989, when the totalitarian Soviet communist regime instructed the military of the Soviet Army and the Internal Security Forces to apply special means and physical force with particular cruelty against demonstrators. As a result of the violent actions of the Soviet military, dozens of Georgians, young and old, women and men lost their lives on 9 April 1989.

Methods and materials applied. Within the limits of the study of this article, the following methods were applied: historical, analysis, synthesis, comparison and logical awareness. The materials used are the publications of scholars in the field, archival materials and relevant legislation.

Discussions and results obtained. Information about the massacre was kept under wraps, but under pressure from international commentary the USSR leadership was forced to provide brief information about the violent intervention of the military, distorting the truth as usual. The propaganda media declared that the Soviet authorities had no other way of stopping the attempted overthrow of the government, which had been triggered by certain nationalist movements in Georgia who wanted to bring about the break-up of the USSR. They speculated on the alleged dangers to Russian speakers and published material on the anti-Russian bias of the protests. At the same time, representatives of the Ministry of Justice of the Soviet Union were instructed to provide only information that would justify the actions of the Soviet military.

One example is the article published by Colonel of Justice Bagraev Iu.M., in a historical research magazine. Analyzing the material, we have the opportunity to identify the methods used by the Soviet justice system to cover up crimes committed by Communist Party officials, representatives of repressive bodies and Soviet soldiers. Thus, at the beginning of 1990, 10 months after the tragic events in Georgia (at that time it was called the Gruzhin Soviet Socialist Republic n.a.) the information appeared that: "The General Military Prosecutor's Office is concluding the criminal prosecution in the case brought by the Prosecutor's Office of the Gruzhin SSR against persons holding positions in the Soviet Army and the Interior Corps of the USSR MIA, who participated in the violent prevention of the unsanctioned rally in the capital of Gruzia" [2, p.41].

Reconstituting the events that took place in that historical period in the USSR, the Romanian author Vasile Şandru states the following: "Against the background of the rapid deterioration of the economic situation, strike movements developed, which included broad categories of workers in basic sectors of the economy (mining, metallurgy, etc.). Despite these difficulties, the process of democratization opened the way for a wide range of national social and political forces, reflecting the diversity of interests in Soviet society. The national liberation movements in the constituent republics, including the Russian Federation, rose up with unimaginable force to liberate themselves from the domination of the totalitarian center and achieve full sovereignty.

The partly free elections of March 1989 brought many personalities to the legislature who ran in competition with candidates supported by the P.C.U.S. (Boris Yeltsin, Academician A. Sakharov, etc., forming an opposition group). In a number of republics inter-ethnic conflicts broke out, based on injustices inherited from Stalin's time. Attempts were also made to suppress by force demonstrations in favour of independence in some republics (Gruzia, April 1989) [3, p.81].

Referring to the events in the Georgian capital that took place between 5-9 April 1989, colonel of justice Yu. Bagraev, in January 1990, on the instructions of the Soviet authorities, made the following statements: "As it turned out, the tragic events in Tbilisi were provoked by the nationalist forces which took part in the protests. These non-formal organisations began their activities as early as 1988. Among them are: <<St. Elijah Association>> (Leaders – Z.G. Gamsahurdia, I.S. Tereteli, I.D. Batialvili, M.S. Kostava), <<Ilya Ceavceavadze Association>> – <<The Liberals>> (T.R. Ciheidze, G.S. Mamulia, Z.N. Ceavceavadze), <<National Democratic Party of Gruzia>> (G.A. Ceanturia, I.G. Sarshvili, I.V. Georgadze), <<National Justice Union of Gruzia>> (I.G. Shenghelaia, Z.R. Kutalia A.P. Imnadze). The activity of these organizations was directed to create chaos in the

republic with the support of the followers who joined them in order to denigrate and discredit the Soviet authorities and the communist party. At the urging of these nationalist organizations 30 young people after the end of the rally at 5 a.m. on 5 April 1989 announced a hunger strike, which they declared they would end only when <<Gruzia...becomes an independent state>>.

Over the course of a several days, to people who have announced a "hunger strike" around 120 people joined. On April 6, at the rally near the Government House, an address to the President and the US Congress, to the NATO member countries was read out, asking for a UN meeting to be organized on the day of the sovereignty of Gruzia, for the day of February 25, 1921 (when the Gruzinian SSR was formed) to be declared the <<day of the occupation of Gruzia by the Bolshevik forces of Russia>>, for the necessary support to be given to Gruzhia to leave the USSR... <<We must not remain part of the USSR communist empire...said Zeriteli. There is no Gruzine SSR, there is Gruzia, a sovereign state with its own history, which was occupied by the Russian Communist Empire. We immediately demand to leave this empire. After this event the army of the Russian Empire must no longer be present on the territory of Gruzia, and the puppet government of Gruzia must resign. We call for UN troops to be introduced into Graubünden, which will provide security for the citizens during a transitional period. After these actions we are to announce a national referendum, on the basis of which a congress will be held at which a provisional government will be elected, which will represent the will of the people... Further, Gruzia must become a member of NATO as a strategic partner. All non-formal organisations in Gruzia are calling for such changes. For us the USA is a symbol of peace, human rights protection and democracy. Independent Gruzia will turn towards the USA... >> [2, p.41-42].

Obviously, the Soviet totalitarian regime was in a state of shock at the statements made by the informal leaders of Georgia who were participating in the protest actions. Their call to fight for independence and to distance themselves from the USSR while changing the political vector towards the USA could not be accepted by the Kremlin leadership. In such a situation, the military was instructed to intervene violently in order to instill fear in the people and to suppress any attempt by the population to protest against Soviet power. Many people were arrested beforehand, reminding the population of the repressions of 1937, of Beria and other Bolshevik leaders, who were later sentenced to death for the crimes and atrocities committed against Georgians and representatives of other peoples.

Soviet writer Roi Medvedev in the book „Н.С. Хрущев. Политическая биография" devoted to the former USSR political leader Nichita Khrushchev, mentioned that: "In 1954-1955 in the cities of Leningrad, Tbilisi, Baku, public court trials were held against people from Beria's entourage, who until recently held high positions in the NKVD-MGB-MIA structures. In Leningrad, a group of workers headed by former MGB minister Abacumov, who was at the time authorized to conduct the investigation in the so-called <<Leningrad file>>, was in the dock. In Bacu, a group of NKVD workers and former party officials led by former republican leader Baghirov were brought to justice. In Tbilisi, a group of people close to Beria, led by Ruhadze, was in the dock..." [4].

Over the years, there have also been purges of the ranks of members of the Communist Party in the Gruzin SSR who, in the opinion of the Soviet authorities, have committed acts that compromised them. One such campaign took place in the 1970s, during which: "At a large knitting factory, the theft of raw materials and financial resources was detected in particularly large quantities. As a result of the prosecution, 50 people were convicted. There were 50 people working in the factory, 48 of whom were subsequently imprisoned" [5, p.27].

Such operations were intended to mimic the fight against corruption and to cover up exceptionally serious crimes committed by Kremlin political elites. During our investigations, we found that at that time, among the people who were convicted were Georgians whose family members had at one time been subjected to political repression, even though some of them lived in the territory of other Soviet republics. One example is the case of Rivaz Lomtadze which took place in the

mid-1980s. He was the general director of an agro-industrial enterprise in the Moldovan SSR. Kalii Lomtadze, the father of the 'accused', was sentenced to death and shot in Georgia in 1937, while his son Rivaz Lomtadze found himself in the dock almost five decades after those tragic events. The action was directed by the second secretary of the CC of the Communist Party of the Russian Soviet Socialist Republic, V. Smirnov: "The investigation group of the republic's prosecutor's office "composed" 105 charges and included them in 30 volumes of the case file. The large number of them can be explained by the desire to accuse him at all costs of committing at least one crime.

According to the indictments, R. Lomtadze, contrary to the existing rules, received numerous delegations and, through abuse of his office, carried out tastings, as a result of which food and alcoholic beverages were consumed in excess of the established rules. Another accusation was that in 1983 R. Lomtadze illegally purchased from some people a knife and a knife-blade, which were considered to be blank weapons, which were kept illegally in his apartment in Chisinau from 1983 to 2 August 1985.

The Moldovan SSR Court left only 5 charges, including illegal possession of the white weapons, which in reality were decorative and given to him together with the Georgian national costume by the earthlings. The list of judges who examined the Lomtadze case at the Supreme Court of Justice, even in his capacity as President, includes Alexei Barbăneagră (in 1987 with the surname Barbineagra). By the way, some judges are still working in the judiciary of the Republic of Moldova, and been promoted in different positions" [6, p.134].

Later, one of R. Lomtadze's contemporaries said: "Thanks to the well-known dramatic events of 1989-1991, this regime has become a corpse thrown into the grave of history. Instead, until it was brought to this condition, it was a destructive force, which ruined lives, shattered destinies and outstanding personalities, manifesting itself as a diabolical power, whose downfall even the most ardent anti-communists did not dare to predict" [7, p.8].

At the cost of human lives, this regime was removed from power. The April 1989 protests in Tbilisi are an example of this: <<USSR - the people's prison!>>, <<Down Red Kremlin!>>, <<Stop the Moscow terror of the Gruzin people!>>, <<Down Communist Party!>>, <<Russian occupiers out!>>, <<Fascist army out!>>, <<Russians! Get out of our house!... <<Down to the Communist Party of the Russian Empire!>>, <<Russian occupation army out of Gruzia!>>, <<Russian occupiers! Out of Gruzia!>> ...Spirits were stirring even more. Stones and metal urns flew into the armoured cars heading for Rustaveli Boulevard - everything that came to hand. The smartest of the young protesters climbed onto the tanks and blocked the view of the soldiers driving the military transport" [2, p. 42].

Obviously, Soviet investigators were less concerned with identifying the military who misused special means and physical force against the population, even though eyewitnesses reported that some civilians were mistreated by men in military uniform. Reviewing those events, colonel of justice, Yu. Bagraev intervenes with the following comment: "The investigative bodies have established that the organizers of the operation to "overthrow" Soviet power in Gruzia and seize power for themselves had prepared the actions in advance. They formed special detachments for <<attack>>, <<assault>> and <<reject attack>> by the Soviet military" [2, p.44].

In making such statements, colonel of justice Iu. M. Bagraev did not provide information about the level of training of the special-purpose troops who intervened against civilians participating in the protests. According to the memoirs of one of the founders of these subdivisions, USSR Interior Minister N. A. Shcholokov in 1977 instructed the Higher Command of Internal Affairs to create a special-purpose subdivision within six months. The task was entrusted to the USSR's Deputy of the Internal Troops Lieutenant General A.G. Sidorov who recalled: "Shcholokov mentioned that such units were in the KGB and VDV and recommended that we consult with them. Everything was carried out on the terms indicated... A real "show" was organized with music and unprecedented tricks, which confirmed the superhuman professional training of the fighters. A

model of a house with many floors was built, in which the "bandits" hid.

According to the scenario during the assault on the house, violent altercations were planned on the third floor between the military and the alleged criminals. Some of the events could not be followed because they were taking place in a section covered by the wall, but at one point the fighters appeared at the window. The serviceman annihilated his opponent's attack and at one point threw him out of the window. In reality it was a dummy, but the head of the medical directorate seeing <<the fighter>> thrown in such a way, yellowed his face: <<Is he a soldier?>> From a distance everything seemed to be exactly like that. <<He is a soldier indeed!>> jokingly replied one of the officers. The doctor shouted in horror <<How can I understand all this?>> General Yakovlev began to explain to the latter that it was just a set-up, but he himself questioned this fact by asking me: <<Listen, he is really a soldier?>> [8, p.33-34].

From what has been reported, it appears that General A.G. Sidorov convinced those present at the event that it was just a dummy. In reality, there have been many cases when during such demonstrations soldiers have lost their lives and the information has been concealed. He goes on to tell of another incident: "There were some unpleasant moments during the exercises. The fighters were demonstrating in front of the ministers of the union republics the procedures of hand-to-hand combat, using the weapons provided. One of the fighters did not react in time and: "the knife pierced his lip, so that blood gushed out strongly. They were all in white "kimonos", and the red stain was reminiscent of a brutal scene from an action movie. After the incident Shkolokov inquired about the soldier's condition; fortunately nothing serious – just a scratch.

When it was all over, the Ukrainian interior minister asked him: <<"Nikolai Anisimovich, who are the soldiers who demonstrated the proceedings?" - "Soldiers on term from the Dzerzhinsky division". The Ukrainian minister nodded in confusion: <<I would like an answer to one question: if after demobilization someone among them is influenced by dubious people, what will we do with them then?>> Shkolokov seemed to be waiting for this question. He looked them all over and answered: <<I have gathered you today to see what problems we have to solve. In a short time you will receive the order to form in every union republic such units with a special purpose. All of them will be part of the Interior Corps. Select men and train them>>... Yakovlev gave instructions that in every company there will be a special-purpose platoon, in every battalion – a company. Their professional training was on his attention, and Lieutenant-General Sidorov was travelling all over the country, checking the operational capability of these subdivisions, offering them consultations as needed.

In the course of time, in the context of the evolution of socio-political events, we became convinced that these actions were necessary. Shortly afterwards the units participated in restoring public order in the Caucasus and Middle Asia. The waves of protests could have destroyed the Soviet Union with lightning speed, but the command of the Interior troops, with the help of the best trained fighters, managed to put out this "fire" and bring the country out of the crisis with a small number of casualties" [8, p.34].

Analysing how these troops intervened during the protests in Georgia and other former Soviet republics, we cannot agree with the claims that the military of the special-purpose subdivisions were trying to get the country out of the crisis with a small number of casualties. They were ready at any time to apply firearms against those who resisted Soviet power, as they repeatedly did at the command of the totalitarian Communist regime. They were convinced that Soviet justice would not condemn them to custodial sentences for their crimes. KGB and special-purpose troop officers disguised in civilian clothes and infiltrating the crowd played a destabilizing role during the protests, at times resorting to provocative actions and then disappearing from the scene. Collaterally such cases are also confirmed by the author Iu.M. Bagraev, mentioning that: <<from the side of the protesters some strong men in the front line held discussions with the military, and then they got scared and ran away. It was because of this that the women were trampled...>> [2, p.45].

From what has been reported we see that the military applied special means and physical force against women as well. At the same time, the author avoids writing that women died as a result of these actions. However, the most human losses occurred as a result of the violent actions of the military on 9 April 1989, when they barbarously used infantry weapons against unarmed people.

Wishing to present the situation differently, colonel of justice, Iu.M. Bagraev said: "The information that was being circulated in the public that the soldiers used infantry spade against the demonstrators was not true. Here are some false statements of some provocateurs <<On the stairs of the Government House I saw how a soldier hit a girl with a spade on her back with such force that as a result of the cut her shoulder blade was severed. At the same time I saw another soldier hit a militiaman on the arm with an infantry spade>>; <<...the first victim I saw was a girl with her chest cut by an infantry spade. She was taken to the medical point, where she died a few minutes later>> Such testimonies were submitted by more than 44 people. Later some of them recanted their testimonies. One of them stated <<I believe that the blow was applied with a cutting object, about which I informed the doctors. Who and with what hit me, I don't know>>... The investigation concluded that out of 21 complaints filed about causing serious bodily harm as a result of the application of infantry spade, only 8 were true" [2, p.46].

It can be seen how the author of this article is trying hard to convince the public that the Soviet military committed fewer crimes than is being reported in society, claiming that out of 21 reported cases, 8 cases were true, when the military actually used the harpoon against civilians. These are 8 cases when the representatives of the Armed Forces acted like medieval executioners executing victims on the scaffold. What is more serious is that Soviet Army soldiers at the end of the 20th century barbarously allowed themselves to kill civilians just because they were taking part in protests against Soviet power, and inflicted with particular cruelty with infantry spades.

In this sense we involuntarily recall the words of A. Solzhenitsyn: "Has our country ever known, does any other country today know so many horrible and heartbreaking stories about so many families or tenants of the same communal apartment? Every reader could recount enough..." [9, p. 459].

In addition to what was reported, some participants in the protests claimed that the deaths of several people were caused by poison gas used by the Soviet military against the population. Such cases cannot be excluded, but the author Iu. Bagraev was quick to deny this by allowing himself to denigrate the participants in the protests, who sought medical assistance after the violent intervention of the so-called forces for the maintenance of public order: 'There were no deaths from poison gas poisoning. All the rumors proved to be false... (among other things, the Soviet Army is not equipped with such substances)... about the intentions of the <<formalists>> to mislead the population that the military forces used poison gas and violently applied special means speak the following findings of the investigators:

– As victims of gas poisoning in medical institutions in Tbilisi were admitted people infected with venereal diseases, who were poisoned with cooking gas, pregnant women, psychopaths and neurotics, food poisoning, etc.;

– 43 people in total;

– 272 treatment forms were drawn up in the names of non-existent persons, persons who did not live on the territory of the Republic, and in the names of persons who never sought medical assistance and learned about <<poison gas poisoning>> only during the investigation from law enforcement officials;

– 107 people, who were undergoing treatment even though they were determined to be <<healthy>>, were nevertheless put on the <<poisoned>> list;

– the same people were repeatedly referred to gas poisoning in different medical institutions and each time the referrals were set as separate cases.

These and other actions, in the opinion of the investigative bodies, were directed from the shadows in order to provide at all costs <<relevant evidence>> that would amplify the tragic events in Tbilisi and discredit the Armed Forces and internal troops of the USSR MIA in the eyes of the population" [2, p.46-47].

Knowing the methods of party officials to involve themselves in the act of justice and to order the fabrication of files on political orders, we can question the veracity of the Soviet author's account and his conclusions about the causes of the deaths of more than twenty people on 9 April 1989. In conclusion, the representative of Soviet justice, without producing any evidence, resorts to propaganda methods and makes the following statements: "In the forensic reports of 17 deceased persons (two bodies were not examined because the relatives refused) it is stated that all the persons died because they were crushed by the crowd during the altercations, receiving traumas incompatible with life".

There have been rumors that "Moscow's hand" is to blame. Such situations have occurred before in the history of Gruzia, when the repressions organized by Beria in the struggle for power in the 1930s were blamed on the Moscow leadership. The same intentions are held by today's <<leaders>> of Gruzia. They look for the culprits outside the republic, primarily in Moscow. In reality, the facts prove the opposite: while local extremists were stirring up trouble and calling the population to "holy rebellion", rebellion and terror, Moscow patiently and wisely urged them to show goodwill. Members of the Soviet government and the Party CC did their utmost to calm the spirits, and to settle the pressing problems peacefully. And the decision to use the Armed Forces to prevent the unsanctioned rally from taking place and to quell the mob of hooligans was taken at the insistence of the authorities in Gruzia. The majority of the republic's citizens welcomed the decision, criticizing the local authorities for their passivity and overreaction. This is not all the information about the events in Tbilisi. The investigative bodies still have a lot of work to do to establish the truth" [2, p.47].

On the basis of the published material, we are convinced that the Soviet investigative bodies did not aim to establish the truth, but on the contrary, they prevaricated the investigations and covered up the cases in order to save the "honor" of the Soviet Army. At the same time, voices emerged from some of the autonomous republics within the RSFSR calling on the government to grant them independence. In this context, in 1989, while the Chairman of the Soviet of Ministers of the RSFSR was A.V. Vlasov, the leadership of the USSR took the decision to reconstitute the Ministry of the Interior of the Russian Federation in order to intervene by force if necessary. In October 1989, General V.P. Trushin" [10, p.290].

He was later promoted to the post of deputy to the Minister of Internal Affairs of the USSR. In his biography are the following lines: „Impeccably executed the instructions of the minister, often was present in <<hot spots>>, which appeared in the country, where he acted with firmness and manliness solving complicated problems in situations where violence was applied; Each time he acted according to the context of the expanding process of <<sovereignization>> of the republics. He took an active part in the fight against organized crime that had succeeded in forming structures throughout the Soviet Union, which was already in a state of agony" [11, p.289].

Paradoxically, every leader of the USSR MIA who took an active part in the violent suppression of protests in various Soviet republics avoided describing the truth in his memoirs, presenting himself only in a positive light against the background of the events that took place. The fact is that in 1989, without waiting for the results of the investigation into the tragedy in Tbilisi, Soviet commanders and military applied the same tactics in the town of Bacu, Azerbaijan SSR, in January 1990, resulting in the deaths of more than a hundred protestors. This was followed by the massacre in Lithuania, January 1991 etc.

With a view to regulating relations between the union republics on a new basis, a new "union treaty" was prepared – after long and arduous negotiations – to be signed around 20 August

1991. In order to prevent this act and to restore the old totalitarian practices, exponents of conservative forces in the party and state leadership attempted a coup on 19 August. The failure of this attempt, due to the firm action of the leadership of the Russian Federation, meant the end of the Soviet empire and the appearance on its ruins of 15 independent states; the P.C.U.S. was outlawed.

The official abolition of the former USSR was proclaimed on 8 December 1991 by Russia, Ukraine, Belarus, which created the Commonwealth of Independent States. On 21 December, eight other former Soviet republics (Kazakhstan, Turkmenistan, Uzbekistan, Tajikistan, Kyrgyzstan, Armenia, Azerbaijan and later Moldova) joined the new community, which, according to its founding documents, "is neither a state nor a suprastate formation". In December 1993, Georgia joined the CIS" [2, p.81-82].

Returning to the situation of the Soviet military, it is worth recalling that on the eve of the 72nd anniversary of the formation of the Soviet Army, the Chief of the General Headquarters, M.A. Moiseev (General of the Army) stated: "In the future we will use the Armed Forces only to repel aggression from outside; thus, it is not we who will start the war... In view of the political priorities at the present stage, we do not plan to reduce the Armed Forces to the level strictly necessary for defense, and in this way we can develop the country's economy".

The reality is that this message, among others, was declarative. The Soviet army, passing under the jurisdiction of the Russian Federation, participated in wars of aggression against the Republic of Moldova in 1992, against Georgia in 2008 and against Ukraine in 2014. It is regrettable that even at this stage the Russian army of occupation has not left the territory of these countries. At the same time, a large number of Russian researchers are involved at political behest to distort the historical truth. Some of them undertake attempts to rehabilitate the crimes committed by the Soviet regime by encouraging the current leadership in the Kremlin to fight much more fiercely with so-called extremist organizations.

Thus, S.P. Vaile declares that "By applying political repression, condemning people en masse to death by shooting, establishing the <<correct>> ideology, the Soviet totalitarian regime stopped the development of extremism in Russia until almost the mid-1980s. At the end of the 1980s, Russia underwent some social and political changes. One of the most emblematic events was the recognition at state level of the existence of organized crime in the country. In the 1990s, criminal organizations continued to multiply (their structures and technical equipment were being improved). At the same time, under the influence of these factors, as well as liberalism, freedom of conscience, the conflicts in the North Caucasus and other regions, extremist organizations were again formed in Russia. Most of them, with neo-fascist and nationalist orientation" [13, p.13].

Such authors avoid writing about Russian chauvinism and expansionism. About the fact that Russia, in brutal violation of the rules of international law, keeps territories belonging to sovereign states under armed occupation. The provocations against Georgia continued even after the 2008 ceasefire agreement. Some Russian authors have been quick to declare that it is because of the Georgians that the crime rate in the Russian Federation has increased. Among them was E. Deatlov, who stated that "Cross-border criminal organizations make effective use of the internationally created situation. For example, after the severing of diplomatic relations with Georgia and the introduction of the visa regime, Georgian citizens entered Russia using the Republic of Belarus, with which Georgia maintained diplomatic ties and citizens were able to travel without visas. That is, Georgians could enter Russia via Belarus through a sector that was virtually unguarded" [14, p. 80].

Most Russian criminologists at the time said they had noticed a sudden change in the nature of crime, claiming that extremism and terrorism were the greatest dangers to the security of the Russian Federation, and called for an urgent review of legislation aimed at combating this type of crime. In this regard, General A. Gurov, former deputy in the State Duma of the Russian Federation

(chairman of the security committee) writes: "I sympathise with those who criticized the law on combating extremism, because many things are not clearly described. For example, the definition of extremism contains 253 words, forming 13 sentences. Memorizing these sentences is much harder than learning the poems of Lermontov, Pushkin, Nekrasov and other classics of Russian literature. That's why there are fierce debates in court and a host of other problems that experts have identified along the way... The law to combat extremism was passed eight years ago. It was a different political situation, President Putin had barely managed to prevent the break-up of the country into eight sovereign states, as planned by our opponents abroad. In that context it was necessary to adopt a law, according to which any person who took a step to the left or right deviating from the political course of the state would bear responsibility if proven guilty" [15, p.49].

Analyzing what A. Gurov said and knowing the political situation in the Russian Federation we can easily deduce that they wanted to change the legislation in order to give the Kremlin regime the possibility to eliminate from society any inconvenient person. Other Russian criminologists, through their statements, have dashed any hope of the national minorities living in the autonomous republics within the Russian Federation to achieve independence. Among them is the author A. Dolgova, who at one of the international scientific conferences, showing her loyalty to the Putin regime, began to stir up the mood by urging Russian jurists to adopt much stricter laws to punish people who try to 'destabilize' the situation in the country. Moving from the scientific to the hysterical message A. Dolgova nervously warned the audience about the fact that there is already: "the penetration of terrorists and their supporters into public organizations, into state structures such as the MIA bodies". All this is happening in flagrant violation of the requirements of the legislation in force that stipulates the conditions and the manner of employment of persons in such positions.

Many young people are included in various non-formal organizations. They may at times commit terrorist attacks, because the current legislation on combating illegal migration, separatism, terrorism, corruption and other types of crime is proving ineffective" [16, p. 76-77].

What is certain is that through such messages the authoritarian regime in the Kremlin is encouraged to adopt new discriminatory laws to repress the population, and lawyers become accomplices of political criminality. As the author Iurie Larii notes: "The existence and growth of crimes involving politicians at various levels have always caused and continue to cause irrecoverable damage to society and citizens, seriously affecting the social, economic and political relations of the state. All these relations are protected by law, including criminal law, and their impairment by the political factor causes serious damage to fundamental human rights and freedoms, the constitutional order, the economic and energy security of the state, etc.

Also the promotion of separatism and the stimulation of forms of terrorism, the barbaric and illegal seizure of foreign territories, with the subsequent imposition of the status of an independent country and the maintenance of the army of occupation, are a direct consequence of the actions of some politicians, which often fall into the category of exceptionally serious criminal acts. Many current and former politicians are directly involved in various illegal processes of a criminal nature and, instead of being removed from public office and sentenced for their crimes, they continue to rule the country and hold a monopoly in all social and political spheres of the state. In fact, such criminal acts, committed with the involvement of factors that have decision-making influence at the political level, constitute the core of the phenomenon of political criminality" [17, p. 132].

As Romanian author Vasile Lăpăduşi notes, "Since the Rose Revolution of 2003, which ousted President Eduard Shevardnadze from power, Georgia has become Moscow's black sheep, considered an advanced bastion of the West in the midst of the old Soviet empire. This is also why the Kremlin openly supports the struggle of Abkhaz and Ossetian separatists. Putin has never hidden his nostalgia for a strong USSR, capable of standing up to the West" [21, p.1344].

In the Russian Federation, the cowardice of the State Duma and the Government has fostered political criminality, encouraging the Putin regime to invade Ukraine in 2014 and maintain the occupation army on the territory of the Republic of Moldova and Georgia. These countries want to integrate into the European Union and for over a decade they have been in an extensive process of alignment with European democratic norms and standards. During these years: "International experts have noted that Georgia has made significant progress in police reform, achieving a radical change in the attitude of police officers towards citizens." [18].

Georgia provided advice to Moldova on the reform of law enforcement bodies. Some political leaders mentioned in 2012 that "Georgia's results in the fight against corruption, organized crime and the reform of the judiciary are quite impressive. International indicators of the perception of the level of corruption show a qualitative progress of Georgia, placing it in 67th position, on a level with some countries of the European Union" [18].

Obviously, during this period, irregularities in the work of Georgian law enforcement bodies were also identified, and a number of violations of the rights of persons in detention were noted: "The human rights applicable to persons sentenced or remanded in custody are established by international law through a number of conventions and agreements which States, by signing and ratifying them, undertake to ensure the full implementation of their provisions" [19, p.164].

There have been cases of violation of Article 3 of the European Convention on Human Rights. In this respect, the Romanian author Corneliu Bărsan notes the following: "In the case of Ramişvili and Kokhreidze v. Georgia, the European Court concluded that the provisions of this text also apply to the conditions under which a detained person takes part in the trial of his case. Thus, it decided that the treatment to which two well-known personalities from the State in question, with no criminal record, co-founders and shareholders of a media company, accused of extortion, were subjected during the examination of their applications for provisional release, consisted in the fact that the applicants were held during the trial in a metal cage in the presence of numerous police officers and members of the special forces wearing masks and armed, the broadcasting of the proceedings on television throughout the country, the manifest agreement between the president of the court and the prosecutor, and the entry of 'unknown persons' into the deliberations room of the court, when there was no indication of a possible risk of violence on the part of the applicants, was unjustified and humiliating, contrary to the provisions of the text under consideration" [20, p.165-166].

Such cases usually occur when people who have studied and worked during the totalitarian communist regime manage to infiltrate the judicial system. Such individuals resort to the old harmful practices. Regrettably, in the Republic of Moldova too, some judges who without remorse forcibly committed healthy people to psychiatric clinics, carried out political orders, sentenced to death people who should have been left alive during the Soviet totalitarian regime have kept their positions after the Republic of Moldova gained independence, being involved in the process of reforming the justice system. There are also politicians in Georgia who are being blackmailed by the Russian Federation's secret services, and under pressure they are ready to vote for the controversial law on 'foreign agents'.

It is hard to imagine how you can vote a law against your own people just to please the Kremlin leaders, who want to reconstitute the Soviet empire: "In a speech to his compatriots in September 1990, A. Solzhenitsyn recalled the words of the great Russian statesman of the turn of the century, S. Krishanovsky: "Russia does not have the reserves of cultural and moral strength to assimilate all the peripheries. Today this exhausts the Russian national core". Solzhenitsyn emphasizes: "these words have an infinite meaning; we have neither economic nor spiritual strength. We have no strength for an Empire! - And we don't need it, it is going to be taken off our shoulders: it is weakening us, sucking us dry and accelerating our destruction... Now we have to choose: between the Empire that is leading us to destruction, first of all ourselves, and the spiritual and

physical salvation of our own people". Will these words of the great writer find the right echo in the conscience of those who are called to decide the fate of Russia today?" [3, p.82].

Three decades after A. Solzhenitsyn's statement, we see that Russia's fate is decided by a leader who has usurped power in the state, and the people do not show the will to change their destiny. The country has returned to the period of the cult of personality and many ideologists and historians loyal to the Kremlin regime are publishing books in which the current leader is praised as Stalin was in his time. Eventually, one of these propagandists will be the chairman of the commission to investigate the crimes committed by the person being praised, just like Stalin. According to the writer Roi Medvedev, the chairman of the CPSU CC commission to investigate the impact of Stalin's personality cult on the situation in the country was appointed P. Pospelov who was: „ ...one of the authors of Stalin's biography and one of the most active propagandists of the personality cult. But the commission headed by him could not overlook the many abuses and crimes committed by Stalin and the NKVD organs..." [4].

Obviously history will repeat itself and Putin will be removed from power with the involvement of people who today are retouching his biography. It is the fate of all tyrants, who in order to stay in power have unleashed wars of aggression against sovereign states, wanting to restore an empire that has disappeared from history.

Conclusions. Thus we have found it necessary to provide information about the events of April 1989, with the aim of reminding the younger generation of the Georgians who sacrificed their lives during the protest actions in Tbilisi so that their country would no longer be dominated by Moscow. They fought for freedom and democracy, condemning the crimes of the totalitarian Communist regime, and were killed by Soviet Army soldiers during the actions. This tragic event, along with others, demonstrates that the Soviet military were complicit in all the crimes committed by the Soviet regime against representatives of different peoples, and for this they must be demystified. At the same time, it is necessary to strengthen democratic forces and force the criminal Kremlin regime to withdraw its military troops from the territories it has occupied by force.

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ASSESSING THE EFFECTIVENESS OF THE FORCES IN ENSURING AND RESTORING PUBLIC ORDER AND SECURITY

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Summary

The current issue of assessing the time to ensure and restore public order is of particular importance. The political, social, economic, etc. events and protests taking place recently in the Republic of Moldova disturb and raise concerns both for the local public authorities and forces of the national security system and public order.

The given article presents the results of the study regarding the evaluation of the time to ensure and restore public order during mass demonstrations. The purpose of this article is to increase the efficiency and remedial actions of law enforcement during mass demonstrations.

In this regard, some recommendations are proposed for the system of public order forces, of implementing the new identified time indices for actions to ensure and restore public order, as well as mathematical models for evaluating the time of actions of the forces to ensure and restore public order and security for standard and exceptional situations according to proposed and existing techniques.

Keywords: public order, public order security, actuality, importance of public order, maintenance, assurance, restoration of public order.

Introduction. The problem addressed by assessing the effectiveness of the forces in restoring public order, currently, is of particular importance. The political, social, economic events and protests that have recently taken place in many member states of the European Union, disturb and raise concerns both for the local public authorities and for the forces of the security and public order systems.

The last events in different countries (France, Germany, Holland, etc.) demonstrated some shortcomings in the effectiveness of the actions of public order forces during mass demonstrations, which led to considerable material devastation.

The analysis showed that the issue of evaluating the effectiveness of law enforcement and public security forces is not given due attention in the scientific publications of the field.

In relation to the aforementioned, there is a need to evaluate the effectiveness of the law enforcement and public security forces actions during mass demonstrations in order to make their operational actions more efficient.

The given article presents the results of the assessment of the effectiveness of the forces in restoring public order and security during mass demonstrations according to the proposed and existing techniques, as well as the comparative analysis of the results obtained.

The results obtained will contribute to increase the efficiency and remediation of the operative actions of the law enforcement organs.

The following methods were used during the research process:

– *the empirical method*, which allowed the identification of the current level of security in the field of public order, during mass demonstrations;

– *the comparison method*, for comparing the national public security system with the security systems of international level;

– *the systemic method*, for the analysis of the current situation which permanently and stably allowed us to be aware of the new forms in the field of methods, tactics and procedures for ensuring public security.

The principles of objectivity, punctuality and quality were used in researching the aspects of security maintenance, ensuring and restoring public order under normal conditions of public security forces activity.

Evaluation of the effectiveness of the forces in ensuring public order and security according to the proposed techniques. According to the requests of the local public administration and the organizers of the protest events, as well as the action plans of the law enforcement and public security forces, the representatives of the law enforcement agencies will work in the places of any public event in a necessary number of forces in order to ensure public order and security, negotiations and documentation [1; 2; 3; 4; 5].

Taking into account that the necessary forces are mobilized among collaborators, who at the time of the event are in service, the need for additional time for gathering and equipping the forces disappears [6; 7; 8].

The following actions of the forces to ensure public order and security (POS) are proposed:

1. Time to check forces and receive missions before moving to the event location: T_A^v=10 min;
2. Time for boarding the personnel in the means of transport and special means: $T_A^{î}$ =10 min;
3. Travel time from the place of deployment to the place of the event: T_A^{dep} = 30 min;
4. Time for disembarking, encamping and receiving additional missions: T_A^{deb} =15 min;
5. Time to occupy the seats in the device: T_A^{oc} =15 min.

Based on the time indices described, the total time of the actions of public order forces will be evaluated as follows: $T_A = T_A^v + T_A^{î} + T_A^{dep} + T_A^{deb} + T_A^{oc} = 80$ min.

The following typical elements of action for public order insurance are proposed:

1. Command point;
2. Liaison agents at the manager's disposal;
3. The post of public order;
4. Patrol group;
5. The operative group to document, equipped with drones and modern digital technologies;
6. Group of specialists in dialogues and negotiations;
7. Contact group, blocking and denying access;
8. Support group, routing, filtering and fragmentation;
9. Protection and escort group;
10. Group of markers;
11. Control group;
12. Pyrotechnic group and application of special means equipped with drones;
13. Intervention Task Force;
14. Anti-fire group – intervenes to extinguish fires inside the device;
15. Group of special vehicles;
16. Escort group;
17. The security group – ensures the security of detainees and special vehicles in the device;
18. Medical group – provides assistance to personnel inside the device;

19. The reserve group – provides the help and support of all elements in the device;

In cases, when the operational situation requires a wider and more prompt involvement of the public order forces (POF), it moves to staged actions.

Stage 1. Groups 1, 2, 3 and 4 with documentation, observation and surveillance functions, which report to the leader of the public order forces the information obtained of operational interest, move to the place of the demonstration.

The superiors of the mentioned groups ensure the appropriate gathering and equipping of subordinate personnel. These groups, arriving at the premises of the service headquarters, of which they are a part, prepare for the fulfillment of the missions set by the superior boss, at least one day before the public event. After the appropriate equipment, the superiors of the groups present the troops in front of the superior chief for training and receiving concrete missions.

Here time indices will be used for the groups in the given stage, namely: assembly time T^{a1}=10 min and equipment time T^{e1}=10 min.

For the movement of the given groups, modern means of transport will be used, equipped with traffic lights and accompanied by a Road Patrol Crew. In the given case, the travel time to the venue of the public event will be only T^{dep1}=20 min from the place of deployment.

From the moment of arrival at the venue of the mass event, the mentioned groups will occupy the action positions within the prior device. In conditions of prior organization of the actions, the time of occupying the positions in the device can be T^{oc1}=10 min.

So, for stage 1 the total time of the actions will be: $T_{AE1} = T^{a1}+T^{e1}+T^{v}+T^{dep1}+T^{oc1} = 60$ min.

Stage 2. Group 5 with specialists in dialogues and negotiations moves to the place of the demonstration. The given group can be from 2 to 10 people, depending on the nature and extent of the public event. That group requires the least preparation time.

The personnel assigned to carry out the given mission will present themselves in an organized manner in the premises of the public order forces headquarters to receive instructions and missions. The time for instruction will be T^{i2} =15 min.

Their movement to the place of the public event will constitute T^{dep2}=20 min. The time of occupying the positions in the device will constitute T^{oc2}=0 min. So, at stage 2, the total time will be: $T_{AE2} = T^{i2}+T^{dep2}+T^{oc2}$=45 min.

Stage 3. Groups 6-11 move to the site with the functions of stopping, blocking, channeling, filtering, fragmentation, reduced or even prohibited access in some areas and nearby streets, as well as protection and escort functions through the corridor of stakes, formed by the specialized group, for people who want to leave the action area.

This stage can be characterized as the most extensive by the time required to assemble, equipping, check and set missions, embark, move, disembark and occupy the seats in the device.

Since at the given stage the effective already in time must be gathered in the premises of the deployment of the public order forces, the following actions will be carried out:

1. Checking the forces and receiving the missions before moving to the place of the event, for which time requested will be: T^{v3}=10 min;

2. Boarding of the personnel on the means of transport and special means: $T^{î3}$ =10 min;

3. Travel from the place of deployment to the place of the event: T^{dep3}=30 min;

4. Landing, lining up and receiving time-adding missions: T^{deb3}=15 min;

5. Occupancy of places in the device: T^{oc3}=15 min.

The total time of the forces actions at the given stage will constitute:

$T_{AE3} = T^{v3}+ T^{î3}+ T^{dep3}+ T^{deb3}+ T^{oc3}$ = 80 min.

Stage 4. In the critical situation, upon the indication of the leader of the public order forces, groups 12-19 move with the functions of intervention, application of special means, detention and preventive arrest of violent persons, escort to special vehicles and organization of their guard.

Considering that the groups participating in the given stage are some of the most organized

and trained, which are always ready to carry out any type of mission during group violations at public events and equipped with everything necessary, including special transport, we propose the following stock time indices:

1. Operating time of the assembly T^{a4}=10 min;
2. Time for checking forces and means, receiving missions T^{v4}=10 min;
3. Travel time T^{dep4}=20 min;
4. Time of occupying the seats in the device T^{oc4}=10 min.

The total time of the forces actions at the given stage will constitute:

$T_{AE4} = T^{a4}+T^{v4}+T^{dep4}+T^{oc4} = 50$ min.

The total time of the forces actions at the all described stages will constitute:

$T_{AE} = T_{AE1}+T_{AE2}+T_{AE3}+T_{AE4} = 235$ min.

Evaluation of the effectiveness of the actions of the forces in ensuring public order and security based on existing techniques in complex cases. In complex cases, when public order insurance is carried out in stages, the time of actions will be evaluated in the following way:

Stage 1. Assembly time T_{Ae}^{a1} and equipping time T_{Ae}^{e1} of the groups with functions of documentation, observation and surveillance, as a whole take up to 20 minutes each.

Check time: T_{Ae}^{v1} =15 min;

Travel time to the venue of the event: T_{Ae}^{dep1}=30 min;

Time to occupy the seats in the device: T_{Ae}^{o1}=15 min.

The total time for stage 1 will be: $T_{AeE1} = T_{Ae}^{a1}+T_{Ae}^{v1}+T_{Ae}^{dep1}+T_{Ae}^{oc1} = 100$ min.

Stage 2. The group with dialogue and negotiation specialists moves to the place of the demonstration. The personnel assigned to carry out the given missions present themselves in an organized manner and at the time indicated by the superior within the headquarters of the public order forces to receive the last instructions and missions.

1. Instruction time: T_{Ae}^{i2}=20 min;
2. Travel time to the place of the public event: T_{Ae}^{dep2}=30 min;
3. Time of occupying the positions in the device: T_{Ae}^{oc2}=10 min.

The total time at stage 2 is:

$T_{AeE2} = T_{Ae}^{i2}+T_{Ae}^{dep2}+T_{Ae}^{oc2} = 60$ min

Stage 3. The groups with the functions of stopping, blocking, channeling, filtering, fragmentation, reduced or prohibited access in some areas and nearby streets, as well as protection and accompanying functions through the path corridor, formed by the specialized group, move to the site , to help people who want to leave the action area.

At the given stage, the effective in time must gather in the premises of the deployment of the public order forces. The rest of the actions are carried out in the following terms of time:

1. Time to check forces and receive missions before moving to event location: T_{Ae}^{v3}= 20 min;
2. The boarding time of the personnel in the means of transport and the special means: $T_{Ae}^{îe}$= 20 min;
3. Travel time from the place of deployment to the place of the event: T_{Ae}^{dep3}= 45 min;
4. The time of disembarking, lining up and receiving additional missions: T_{Ae}^{deb3}= 15 min;
5. The time for occupying the seats in the device: TAeoc3 = 15 min.

The total time of the forces actions at stage 3 will constitute:

$T_{AeE3} = T_{Ae}^{v3}+ T_{Ae}^{î3}+T_{Ae}^{dep3}+T_{Ae}^{deb3}+T_{Ae}^{oc3} = 115$ min.

Stage 4. At the given stage, they are groups in motion with intervention functions, special means application, detention and preventive arrest of violent persons, escorting to special vehicles and organization of their security move.

When executing the mentioned functions, time limits can be evaluated in the following way:

1. Operating time of the general assembly: T_{Ae}^{a4}= 20 min;
2. Time of checking forces and means, receiving missions: T_{Ae}^{v4}= 20 min;

3. Travel time: T_{Ae}^{dep4}= 30 min;
4. The time of occupying the seats in the device: T_{Ae}^{oc4}= 10 min.
The total time of the forces actions at the given stage will constitute:
$T_{AeE4} = T_{Ae}^{a4}+T_{Ae}^{v4}+T_{Ae}^{dep4}+T_{Ae}^{oc4}$ = 80 min.
The total time of the actions of the forces to secure the public order is:
$T_{tAe} = T_{AeE1}+T_{AeE2}+T_{AeE3}+T_{AeE4}$ = 355 min.

Comparative analysis of time data for ensuring public order. In Table 1 and Figure 1 are presented the data on the duration of actions to ensure public order according to the existing techniques T_{Ate} and those proposed T_{Atp}, the relationship between the respective times $R_A = T_{Ate}/T_{Atp}$ and the relative time difference $D_A = (T_{Ate}-T_{Atp})/T_{Ate}$

The actions	Duration of actions according to existing techniques (minutes)	Duration of actions according to the proposed techniques (minutes)	R_A	D_A
Stage 1	100	50	2,0	0,5
Stage 2	60	35	1,71	0,42
Stage 3	115	80	1,44	0,3
Stage 4	80	50	1,6	0,37
Total time based on stage actions T_{AE}	355	215	1,65	0,39
Total time of force actions T_A	130	80	1,63	0,38

Table 1. Data regarding the duration of actions to ensure public order

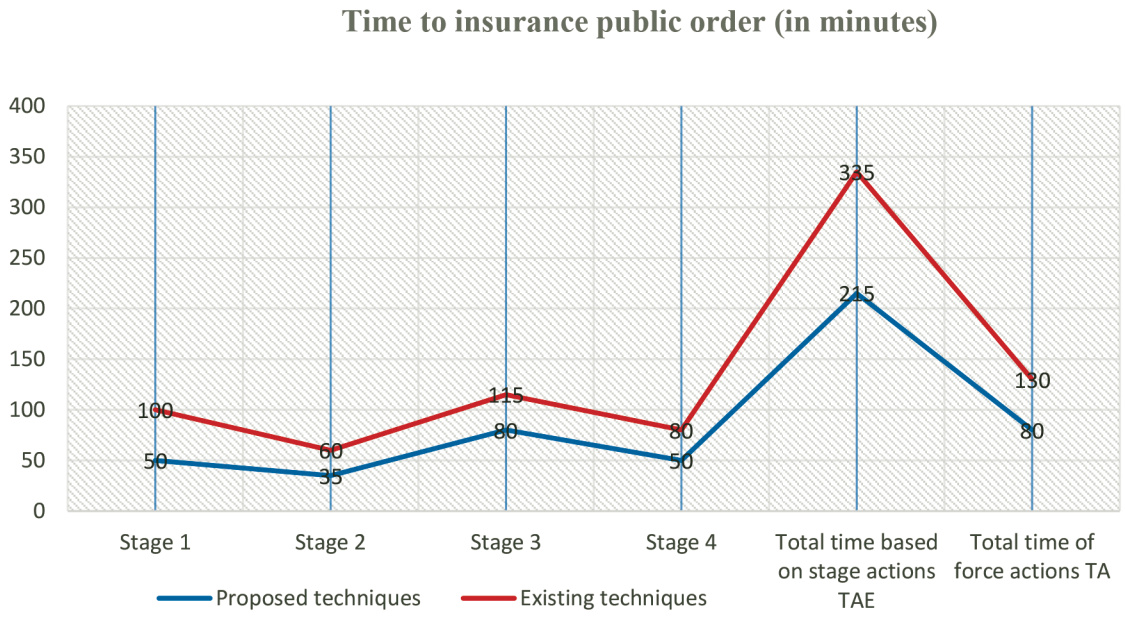

Figure 1. Duration of actions to ensure public order according to existing and proposed techniques

Conclusions. By analyzing the current training level of the forces and institutions delegated with rights to fulfill the duties of maintaining, ensuring and restoring public order and security, following the scientific research, the following conclusions were found:

Currently, it cannot be considered that there is a unitary system of order and public security, but they are structures of the system, which act depending on the situation and the level of conjunctural authority of the institutional management.

The current system is characterized as ineffective for the following reasons:

1. Lack of a single leadership concept and non-uniformity in the regulatory framework;
2. Organizational and functional capacity exceeded;
3. Overlaps and duplication of skills. Difficulties in the management, coordination, cooperation and organization process due to overlapping and duplication of competences, establishing responsibilities, distribution of resources and means etc. [6; 7]

The article presents the existing time indicators for actions to ensure and restore public order and security, taken from personal practice, as well as from the practice of current law enforcement and public security collaborators. A separate index document would not exist in the current system of order and public security.

Time indicators have been proposed for the actions of the forces to ensure and restore public order and security in the usual way, as well as in a state of crisis from the moment the alarm signal is announced and until their arrival at the place of mass events.

Mathematical models were developed for evaluating the time of force actions to ensure and restore public order and security for standard and exceptional situations according to the proposed and existing techniques. The results of the mathematical modeling showed that the time of the actions of the forces to ensure public order for exceptional situations is greater than the standard ones by 2.73 times according to the existing techniques and 2.68 times – in the case of applying the proposed techniques.

The total time of the forces actions to ensure public order is 38% lower in the case of the application of the proposed techniques compared to the existing ones.

In this context, the proposed recommendations and the results obtained will contribute to perfecting the effectiveness of the actions of the forces in restoring public order and security during mass demonstrations.

Based on the above, we see that all these loopholes can be excluded from the system in the future.

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MODELS OF NON-REPRESSIVE SOCIAL RESPONSE TO CRIME IN THE CONTEXT OF HUMANIZATION TRENDS IN CRIMINAL POLICY

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Summary

The work encompasses a series of new models and methods that can be more conveniently assimilated into the curative model, which have broadened the scope of non-repressive opportunities in criminal policy, based on the idea of reintegrating the offender into society through their resocialization or rehabilitation. The educational model, the equitable model, the social rehabilitation model, as well as probation, semi-liberty imprisonment, humanization of the execution regime within the prison environment, etc., are appreciated, aiming at leaving the offender in freedom, reducing the period of imprisonment (penitentiary) execution, modes of executing sanctions with semi-liberty imprisonment, and providing appropriate resocialization treatment for the offender in prison or in the open environment (their family and social environment) during this period. Priority is given to achieving the resocialization of the offender within and through the social environment in which they live or the social environment to which the offender is transferred from an antisocial environment.

Keywords: criminal policy, the principle of humanism, criminal punishment, individualization of punishment, the curative model, the educational model, the equitable model, the social rehabilitation model, probation, semi-liberty imprisonment.

Introduction. The humanitarian model of social reaction to crime regards criminal law as a means of rehabilitating offenders. Within this system, the delinquent is considered a person who, due to their psychological characteristics or the situation they are in, has not acted rationally, despite society and the state attributing them free will [1, p.506]. The existing legislation must provide measures for individuals who have committed criminal acts, which minimize the possibility of further criminalization and incarceration (such as: adopting penitentiary practices, learning criminal skills, forming stable criminal motivations) and ensure their return to society as full-fledged members. Therefore, detention in a penitentiary is not seen as punishment or retribution for the committed act, but as an opportunity for the convict to reflect quietly on their behavior and embark on the path of correction.

The principle of humanitarianism in criminal law entails applying the minimum necessary and sufficient penalties to defend society against crimes and achieve the goal of correcting and rehabilitating the offender. Humanitarianism in criminal law advocates for reducing legal repression as a means of combating crime and employing careful, balanced, and moderate deprivation of liberty penalties [2, p.52]. However, despite reforms and humanization efforts in criminal law, the social reaction to crime continues to focus on repressive measures against criminal activity. It is noteworthy that the current Criminal Code of the Republic of Moldova is characterized by a high level of repression. Our penal law prescribes imprisonment for 86.5 percent of the offenses, and of these, every fifth offense is punishable by imprisonment for a term exceeding 12 years.

Nevertheless, criminal law is gradually moving away from the goal of revenge and exces-

sively severe measures of influence on individuals who have violated criminal law. It is becoming increasingly evident that the fundamental element of criminal law is not always consistently, but inevitably, the concept of civilized interaction between society and criminality, based on the principles of compensation and prevention of new offenses [3, p.152].

The humanized penal system is characterized by the following features: a) the offender is perceived as a socially and legally vulnerable person, whose rights and freedoms are violated in the process of holding them criminally responsible; b) the established criminal punishments are relatively mild (the death penalty is eliminated, imprisonment for an extended period of time is not applied in the case of less serious offenses, and the detention conditions are good); c) non-custodial criminal penalties take precedence over penitentiary detention (especially concerning juvenile delinquents); d) conditional suspension of sentence execution and conditional release from punishment before the term expires are frequently applied [2, p.51].

At present, this model of social reaction has fully developed in Belgium, Netherlands, and Norway. For instance, the Dutch Penal Code, in articles 11 and 12, stipulates that custodial sentences must be served in shared or small-capacity cells or in isolation, depending on the personality of the inmate. Every prisoner, to the extent possible, must be placed in a penitentiary institution suitable for their personality, taking into account their detention period and the possibility of rehabilitation [4, p.102-103]. Moreover, the Netherlands is experiencing a shortage of criminals. In 2018, Dutch authorities decided to close four prisons because they were practically empty. Out of a total of 13,500 prison spaces, only two-thirds are occupied. Dutch authorities are concerned about losing millions of euros for prison maintenance. The reduction in prisons comes against the backdrop of declining crime rates in the country. The issue of depopulating prisons is not new. Amsterdam has made agreements with authorities in Belgium and Norway, who have sent their inmates to serve their sentences in Dutch prisons [5].

The popularity of clinical criminology, as well as the therapeutic model of social reaction to crime, has expanded the scope of non-repressive opportunities in penal policy, based on the idea of reintegrating the offender into society through their socialization or rehabilitation.

In the 1970s, clinical criminology enjoyed considerable popularity for developing and implementing clinical treatment of offenders for their resocialization, the non-repressive influence on them, and the individualization of influence measures. Great hopes were placed in the research of clinical criminologists. Here is how this research direction of criminology was appreciated in UN documents: “The methods of supervising delinquents and their physical control are increasingly perfected, thanks to the remarkable achievements of electronics, the rapid development of behaviorism, and the discovery of various psychotropic drugs. All these create new possibilities for making police activities more efficient and correcting delinquents, about which previous generations did not even dare to dream” [6, p.3; 7, p.149].

Leaders in this field were France and Italy, where clinical criminologists enjoyed authority and had a strong influence on shaping the state’s rehabilitation policy for convicts. Under the influence of clinical criminology doctrine, practically all European states implemented corresponding changes in their repressive penal policies. While most states were somewhat reserved about the practice of indefinite sentences and the increasing role of medical professionals in determining terms of deprivation of liberty, the humanization of repressive policies was practically achieved in all European countries. Fines, warnings about the inadmissibility of law-breaking, suspended sentences, and so-called semi-liberty imprisonment (where the offender remains in their family and social environment, retains their job, but spends nights, weekends, and holidays in prison) were implemented even in Scandinavian countries, which have always been characterized by conservatism in penitentiary system reforms. In France, the prison system reform of August 1985 humanized the conditions of imprisonment. Social-educational services were established in prisons. Convicts were given the opportunity to receive vocational training, attend educational in-

stitutions, and receive medical care outside the prison, without constant supervision from prison administration [7, p.200; 8, p.30-31].

The therapeutic model of social reaction to crime was influenced by the ideas of the "social defense" doctrine advocated by Filipo Grammatica and, especially, those of the "new social defense" promoted by Marc Ancel, which specify that penal policy, based on "social defense," should primarily focus on individual prevention and not on general crime prevention. According to adherents of this doctrine, treating and rehabilitating delinquents through non-penal means effectively protects society against crime, rather than relying solely on punitive measures.

The therapeutic model of social reaction to crime aimed at: a) focusing penal policy on the idea of rehabilitating the offender, meaning the return of the person who committed the offense to a normal social environment; b) adopting appropriate treatment methods capable of alleviating the reactive tendencies of the offender (reducing or eliminating aggression, egocentrism), contributing to correcting criminal vocations, changing objectives and habits, renewing motivations, and altering attitudes (including ridding delinquents of their indifferent attitude towards criminal punishment); c) adopting procedures and techniques for individualization, contributing to rehabilitation, starting from the judicial stage (individualizing the applied punishment) and continuing during its execution (penitentiary individualization); d) adopting extensive social, economic, cultural, and professional programs aimed at ensuring the most adequate social reintegration of former convicts.

Therefore, according to the curative model, punishment is considered a means of clinical influence on offenders (real and potential), strictly individualized for their resocialization. Resocialization of the offender begins at the judicial stage, continues during the execution of the sentence (in prison), and concludes after the completion of the sentence, with social reintegration [1, p.476].

A series of new models (the educational model, the equitable model, the social rehabilitation model) and new methods (probation, semi-liberty imprisonment, humanization of prison environment, etc.), which can be more comfortably assimilated to the curative model, aimed at leaving the offender at liberty, reducing the duration of imprisonment, implementing methods of semi-liberty imprisonment, and providing adequate resocialization treatment for offenders in prison or in open environments (their family and social environment). Priority is given to achieving the resocialization of the offender within and through the social environment in which they live or to which they are transferred from an antisocial environment.

The educational model involves correcting or eliminating the antisocial behavior of the offender, carried out in the prison environment, using methods such as vocational training, education during leisure time, individual or group counseling, various forms of physical, psychological, and social therapy, medication, surgical methods, individual psychotherapy, and group therapy. According to the educational model, crime is usually generated by the individual pathologies of the offender or by disturbances in their personality structure. Through applied treatment, the educational model ensures the elimination of disturbances in the offender's personality structure, thus resocializing them. The educational model was extensively practiced in Scandinavian countries and North American states due to the high level of crime in these countries and the large expenses incurred by authorities for sentence enforcement. Scientific research accompanying the implementation of the educational model did not find significant successes. At the same time, human rights organizations revealed violations of human rights during the "forced" treatment applied to convicts.

The equitable model is based on justice, mutual respect for rights and obligations, and the equal satisfaction of everyone's interests. The key element of the equitable model is ensuring and firmly respecting the constitutional rights and freedoms of convicts as a matter of particular importance in their resocialization. The essence of the equitable model lies in humanizing the

execution of punishment. According to the equitable model, punishment should not cause social, psychological, or physical harm to the offender or turn them into a mere object of manipulation. A humane attitude toward the offender is the main task of society if it desires the positive effects of punishment. Even though freedom of movement is restricted through punishment, the convict retains their constitutional rights. The convict is guaranteed the right to defense. Human rights supervisors (ombudsmen) and magistrates responsible for monitoring human rights must ensure that the attitude towards convicts is humane and legal. Only when a person's rights are firmly guaranteed and protected can they assimilate the norms of legal conduct.

It is necessary to reduce the application of custodial sentences. Prisons should be located in urban centers, where no more than 300 convicts serve their sentences, and living conditions should meet the standards of industrial society. Forced treatment, as well as a series of therapeutic methods, are to be prohibited as they are not effective and contravene the constitution. The benevolent agreement of convicts to undergo treatment, on the contrary, should be encouraged in prisons to humanize them. Treatment includes general education and vocational training, psychological counseling, and group therapy. Treatment is not the sole or primary purpose of deprivation of liberty.

The social rehabilitation model is centered on identifying a correct response to the offense, through which the offender, victim, and society can be helped. According to this model, not only the offender within and through the conformist social community in which they live but also the victim of the offense and even some social groups (for example, through family therapy) are subject to influence (resocialization). "The convict will not serve the sentence in prison but will be left free (in their family and social environment). The execution of the convict's sentence is entrusted to the community and consists of correcting and improving relationships between people in well-monitored, small communities. The aim of the social rehabilitation model is to improve the quality of human relationships within the community. Thus, by improving the quality of relationships within the community where the delinquent lives, their, the victim's, and certain social groups' resocialization is achieved. In the given community, the delinquent is to put their relations with their family, school (if they are a minor), neighbors, work colleagues, and leisure companions in order. In this way, society is also involved as a participant in the non-repressive influence process. Through compensation for damages caused, the convict must seek and obtain reconciliation with the victim of their offense. As a result, social understanding and order are restored" [9, p.424].

Probation represents a form of conditional sentence, widely used in the criminal justice systems of England, the USA, and a number of other states. By adopting a decision on probation, the court conditionally suspends the execution of the prison sentence imposed on the convict and sets a probation period under the supervision of a probation officer. The court may require the released offender not to change their residence and/or domicile without the consent of the competent authority, not to visit certain places, not to meet certain persons, to undergo treatment for drug addiction, alcoholism, drug addiction, or venereal disease, to participate in a special treatment or counseling program, to attend training courses, etc. The probation service is responsible for community supervision of how convicted persons comply with the measures and obligations imposed by the court. The convict is obliged to report periodically to the probation service, and the probation officer may visit the offender at home at any time (usually, one probation officer is responsible for 60-70 convicts). Therefore, *probation has defined itself and continues to define itself in certain jurisdictions as an alternative to imprisonment.*

Sometimes, *the adoption of the judicial decision of conviction is suspended*, allowing offenders whose guilt has been established but who exhibit good behavior to remain at liberty. Both in the case of suspending the pronouncement of the conviction decision and in the case of conditional suspension of the sentence execution, during the probation period, the offender is supervised,

guided, and provided assistance by the probation officer [10, p.170].

A series of non-repressive *methods have targeted ways of executing sanctions in semi-liberty regimes*, particularly applicable to minors. Thus, in Belgium and Germany, as well as in other countries, the "Weekend Imprisonment" model was introduced, according to which, except for weekends when the convict remains in prison, for the rest of the time they are left in their family and social environment and maintain their job [11, 215].

In this vein, there is also the so-called *"partial probation",* which is preceded by a short period of serving the sentence in prison. If the court concludes that it is not rational for the offender to serve the entire prison sentence in prison, it may order the partial suspension of the convicted person's sentence, indicating in the decision the period of imprisonment and the probation period. During the probation period, the offender is supervised by the probation officer. This method of individualizing the prison sentence by reducing the term of imprisonment in prison and establishing a probation period for the unexecuted part of the prison sentence is relatively new to the criminal legislation of the Republic of Moldova, having appeared only at the end of 2017. Thus, by Law No. 163 of 20.07.2017, in force on 20.12.2017, Article 901 "Partial Suspension of the Execution of the Prison Sentence" was introduced into the Criminal Code of the Republic of Moldova.

Simultaneously, a strong movement to *reform the prison system* occurred, with the general tendency being the humanization of the execution regime [11, p.215]. In European countries, the execution regime underwent substantial changes. In some cases, there were even unwanted exaggerations, creating conditions for convicts that were superior to those they had in freedom. Thus, prison cells resemble hotel rooms, and some prisons that stood out for their exceptional comfort were nicknamed "rest houses." Inmates actively participate and engage in social life, pursue studies in higher education institutions, and engage in creative activities. Many convicts are interested in painting, and their works were exhibited in art galleries. Works by inmates were eagerly purchased by enthusiasts of exotic prison art. The social community establishes permanent connections with inmates. Sometimes, even convicts took under their protection unfortunate individuals from society, whom they learned about from the media, providing material support to single mothers and orphaned children.

In some models of social response, there was an increased concern for post-penal treatment, which aims to support the offender upon release from prison, so that they can avoid criminogenic situations and mitigate the process of stigmatization. In support of this post-curative model, there is a preference for minimizing the period of imprisonment in prison and more boldly applying the conditional release measure "on word", already practiced in the Anglo-Saxon system. "According to the provisions of this system, the sentence is set between a minimum and a maximum, and subsequently, after the minimum has been served and depending on the evidence of correction provided by the convict during the sentence, the decision is made about when to apply the conditional release "on word" [12, p.230].

The penitentiary-executional system aims at the resocialization of inmates and the prevention of new offenses. It is particularly important for this objective to be successfully achieved. The effectiveness of inmate resocialization and the prevention of new offenses are determined by the recidivism rate after serving the sentence. For example, the number of recidivists in Russia is 70 percent of the total number of former convicts, in the USA – 80 percent, in European countries – on average 50 percent, and in Norway – less than 20 percent. The Norwegian prison operates on the principle: "To correct the person, it is necessary, first of all, to respect them". Conditions are created for inmates that favor their resocialization. All inmates are required to learn or work, passions, hobbies, or self-education are encouraged. Inmates communicate with prison staff on equal terms and with mutual respect. Six months before release, inmates are transferred to a rehabilitation center where they are prepared for release. The rehabilitation center operates on the principle: "Before taking a person out of prison, the prison must be removed from the person's soul". In

this center, conditions are as close as possible to those in freedom. A curator is appointed for each inmate to address their housing, employment, health, etc. Thus, a decent person is released from prison, with respect for others, respect for work, certain interests, good health, future plans, ready to reintegrate into society as a full-fledged member [13].

Conclusions. We believe that in order to balance the current system of criminal penalties, it is necessary to develop a new social ideology. It is necessary to conduct extensive social work with delinquents, based on a detailed study of the interaction between criminal behavior, social status, and the professional activities of individuals. Many things need to be done in favor of the victim as well. For example, for certain types of offenses, monetary compensation may be provided. Because a significant portion of offenders are poor and unable to compensate victims for damages in monetary terms, the state must assume the responsibility of compensating the victim.

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SOME ASPECTS OF THE COMMON/PUBLIC DANGER OF PROPERTY CRIME

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Summary

Theoretically, it is known that various public circumstances have a similar effect on crime. On the basis of this theoretical criminological premise, criminological research on crime is required in the new public circumstances that have arisen since the transition from communist to capitalist rule. We have responded to this scientific need with criminological research that has looked at the public danger and, of course, the consequences of crime against property in the new public circumstances. We carried out our criminological research using the documentary method (criminal files and analytical material from law enforcement agencies), the content analysis method (material from the mass media), the interview method (law enforcement workers, lawyers and victims), the statistical method (statistical data from the Republic of Moldova and Canada), the observation method (prices of various goods and works compared to people's incomes in the Republic of Moldova, Canada and Romania), and the abstract construction method (data interpretation). According to our criminological research, crime targeting goods shows greater public danger and more destructive consequences in the new public circumstances. A change in the crime prevention strategy is therefore required in view of the new state of property crime. We have not yet found in criminology a methodology to measure this impact continuously.

Keywords: property crime, crime prevention, public danger of crime, consequences of crime, criminal victimization, criminology.

Introduction. Before we can prevent crime, we need to know its features and factors [1, p.154]. In other words, we need to answer these questions: What is happening to crime now? What will crime be like tomorrow or the day after? Why is crime the way it is? What do we need to do to improve the state of crime?

Criminologists also talk about the state of criminality and the criminogenic situation, but also about crime prevention.

It is the duty of the criminologist-practitioner to find the answers required [2, p.160]. Where criminological work is quite developed, we can speak of the criminologist-analyst, the criminologist-forecaster and the criminologist-preventive, and where there is no division of tasks, the (generalist) criminologist will have to do them all.

We cannot fully know the state of criminality without revealing its destructive power, without finding out its public danger. Criminologists also call it the character of criminality, which is a key criminological indicator. Criminological knowledge of the public danger of a type of criminality enables us to choose the best way of preventing it. Moreover, it is of great importance in the choice of the best way for practitioners to prevent crime.

Our criminological research has led us to discover new facets of the common menace of property crime, which we present in this paper.

Methods and materials applied. The knowledge presented in this scientific communication was acquired using the documentary method (criminal files and law enforcement analytical materials), the content analysis method (crowd media materials, criminological works), the interview method (law enforcement workers, lawyers and victims), the statistical method (statis-

tical data from the Republic of Moldova and Canada), the observation method, the participation technique (prices of various goods and works compared to people's incomes in the Republic of Moldova, Canada and Romania), and the abstract construction method (data interpretation and the acquisition of new knowledge from old knowledge).

Discussions and results obtained. The common danger of crime against property is distinguished both by the way in which a community is run and by its economic structure.

Thus, the common danger of criminality targeting property is much less in a society with a communist economic order than where there is oppression of man by man.

The communist society is so well thought out that it makes it impossible to destroy or seriously disrupt people's lives because of crimes against property.

The dwelling in which a man lives is the property of the state, so no one can deprive him of it by committing a fraud crime. No man lives on the streets in a communist country, unlike in a capitalist one, where there are many homeless people. The money a man borrows to buy a car goes to a state enterprise, which cannot leave him without the purchased good. Pickpockets can only steal his symbology on the day he receives it, because on the other days, some of it stays in his pocket, some stays at home, and some may go to the bank. It's not the end of the country though. Neighbours or other workers can lend him enough to last him until his next paycheck, without the man going hungry or, much less likely, cold. People are not afraid to borrow money. They are not put to the ground if the debtor turns out to be of bad faith. They make do with the token they have. In contrast, people very-very rarely borrow money in capitalist countries. Debtors often don't pay it back, while their savings are a decisive loss for many people.

The harm that property crime can do in a communist commune is to shake people's confidence in the commune. When the number of such people increases sharply, the doubt arises that the society has no future in the souls of the people. If the leaders or ordinary people do not have enough sense, the lack of confidence can lead to the death of the organisation, and therefore of the society. Therefore, great waves of petty crimes are capable of killing a mass, just as small ants are capable of killing a being much larger than themselves, because they are so numerous. Also, the great increase in the number of crimes against property, people find themselves obliged to increase their expenditure and to reduce their time of rest or work, in order to protect their property.

By default, criminologists and practitioners who have been raised in a communist herd too easily overlook property crime. They miss its destructive power in a capitalist society. We think that what follows will shed more light on this.

The public danger of crime against property is very great in a society that has a capitalist economic orientation. Here are a few examples. A man collects money all his life. At the end of his life, a thief robs him of the money he has collected and he is condemned to a hard old age. Private pension funds are no hope either. Something happens (theft, bad management, economic turmoil, etc.) and the company goes bankrupt. Someone else has been collecting hard cash for eighteen years or less. On the day he has to pay his son's tuition, he can no longer do so. He can, of course, take out a loan from the bank, but paying it off dooms him (again) to a life of deprivation. Someone is saving for a rainy day. Misfortune befalls him, a terrible illness puts him in bed, but the money is stolen from him by some villains. The man is doomed to death or a life of suffering. Someone else wants a house of his own. He is cutting corners in many ways and putting some money aside. He comes to a company that builds houses, gives him all the money. The owner or leader of company runs off with the money collected from hundreds of people or spends it wastefully. As a result, either no house is built or the building is not completed.

Because of the very high price of housing, people are unable to buy another house. He is forced to live in rented accommodation all his life. Tens of thousands of families have suffered this since the transition to capitalist rule, which means that hundreds of thousands of people are suf-

fering. It can happen that a man bought a house, but a criminal set fire to it. Even if it is insured, he will not be able to get more than half the price. The owner is forced to buy a much smaller house with the money he has received, or a very old one, or in a very bad place where criminals live.

Another telling example is pension funds. The capitalist economy always has its ups and downs. If the country's economy suffers a severe downturn, these pension funds also suffer, i.e. they are no longer able to pay the pension promised to the man. The misguided bosses can ruin these pension funds or rip them off for their own benefit. What will these pension funds do in poor capitalist countries? The overwhelming majority of capitalist countries have been struggling in poverty for a long time. Man is left with a lost job and a worsening, even a very powerful old age. According to the people I spoke to in the Republic of Moldova, something else is happening in this regard. A man works for many years in a private enterprise, and when he retires, he finds that the enterprise is no longer in existence, the owners are nowhere to be found, while the authorities do not want to put these years of work to his account.

This is another great loss to man. A young woman works in a private enterprise for many years. She is pregnant (and assumed) that the company pays all her debts to the state. When the young woman has a child and wants to bring it up, the authorities tell her that the private enterprise has not made the payments required by law and that it has closed down, so that she cannot receive the money she wants and has earned through her work. The young woman says that she has to live very hard these years of caring for her child, without any fault. It is true that there are some means of help from the community. But they are never enough in a capitalist country. Man has seen his back-breaking work carried out on the wastelands. He loses the will to do anything in life.

We must say that a capitalist society, like any society in which we find oppression of man by man, is not possible. All these orders collapse in a short time. They survive only and only because of communist ways of organizing public life [3, p.162].

For example, in countries where education is not penniless, i.e. sold by businessmen, most people many people remain uneducated at any level. The masses are going down the drain, so they have to give some leaning without money to the poor. Here's another example. People die like flies or suffer from disease in shrines where healing is sold by businessmen. A lot of problems arise in the society (murders, neglected work, uncared-for children...). This time too, the society is forced to use communist tricks to survive. If need be, the healing establishments cured people of some illnesses without money.

Herein lies a great weakness of economic analysis and research, which wants to find out where life is better, in communist or capitalist countries or in which capitalist country life is better. In order to make this distinction, they look at people's symbols and say that those who earn a higher wage live better. This is the wrong way. Sympathy is the smallest part of people's income. A broader look is required. Thus, the communist workers spend X money to keep a child in kindergarten and Y money to teach him in school. This money is to be added to the man's income. The workers also pay for the prevention and cure of diseases. And this money is to be added to his income. We do the same with all the other benefits (bus, rest, papers...). We cannot overlook the number of hours worked, the power with which work is done, the number of days worked in a year and other factors. If we do so, then we shall see, according to our assumptions, that people's lives are much better in communist countries than in capitalist ones (statistical average). We assume that the row of capitalist countries would also change.

From a criminological point of view, we will highlight one aspect of what has been said, which seems to us to be particularly significant. All the benefits for which people do not pay (education, health...) are very good crime prevention measures. Let's unfold our thoughts, so that we are clearer. If man does not have to pay for something, then he does not have to collect and keep it, so he should not put himself in danger of being left without it by criminals. Private banks which

are overwhelmingly numerous in capitalist economies, are not useful enough in this respect, considering the number of cases in which they go bankrupt, are overthrown by crime, or are a means of cheating people. Here is also our answer as to ways of preventing crime against property.

In order to better understand the common danger of crime against property in capitalist countries, it is necessary to put into the character of crime the number and the extent of crimes against property which strongly affect people.

These particularities of the public menace of property crime change the criminological understanding of the significance of preventing this kind of crime. It is a question of both general and individual prevention of property crime. Thus, in choosing the measure of repressive prevention of criminal behaviour against human property, i.e. criminal liability and punishment, it is necessary to take into account the extent to which the life of the victim has been undermined by the crime against her property committed by the perpetrator. The public danger to the offender is greater when he is careless of the material and spiritual consequences which his sacrifice may suffer both during the commission of the crime and after he has been held criminally responsible. At the same time, the extent, manner and circumstances in which the perpetrator has forgiven the victim must be of great importance (he did it of his own free will, he asked for forgiveness from the community and from the sacrifice, he returned a larger sum of money to cover the damage to his soul...).

In conclusion, we will say that what we have presented is proof that a good criminologist must have knowledge in many branches, including sociology, economics, political science, history or social psychology.

Conclusions. Knowing the public threat of a type of crime is of great significance for crime prevention. It helps practitioners to choose not only ways but also means in their crime prevention work. The economic orientation of a community has a strong impact on the community's risk of property crime. Crime against property is much less dangerous in a communist than in a capitalist society. Crimes against property can only shake the confidence of the people in a communist society, but in a capitalist society they can seriously shake their lives. It is therefore necessary to take into account the extent to which human life has been undermined by a crime, when deciding on criminal liability and punishment for the perpetrator. Crime against property can be strongly prevented with the help of free state services.

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SECURING SOCIETY BY PREVENTING AND FIGHTING PROSTITUTION AND TRAFFICKING IN HUMAN BEINGS

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Summary

According to the Universal Declaration of Human Rights "All human beings are born free and equal in dignity and rights. Every human being can avail himself of all the rights and freedoms proclaimed in this Declaration without any distinction, such as, for example, race, color, sex, language, religion, political opinion or any other opinion, of national or social origin, wealth, birth or any other circumstances" [1]. An essential condition to reduce violence against women and other serious crimes and to ensure respect for women's rights is equality between women and men, or violence against women, human trafficking, prostitution, forced marriages, genital mutilation affect long-term health and psychological integrity of women [2, p.11].

Keywords: gender equality, pimping, human trafficking, crime, vulnerability.

Introduction. Trafficking in women is a phenomenon that has existed since ancient times. There are letters and police reports from other states, dated at the end of the 19th century, that indicate cases of kidnapping and selling children and girls from Jewish villages in Wales and from other parts of Central and Eastern Europe in brothels all over the world, especially in South America, as well as in Africa, East Asia, North America [3]. In Latin America and the Caribbean region, particularly Argentina and Brazil, data on such cases are recorded before the 1860s.

Over more than a century and a half, the factors of this phenomenon have remained practically the same. It is obvious that new causes have appeared due to the trends of industrialization, internationalization, globalization, etc. At this point we can highlight both external and internal causes [4].

As internal factors, we can mention [5]:

the poverty due to poor remuneration for work, the disfavour of jobs traditionally occupied by women or unemployment;

– the limited, conditional access to education;
– the domestic violence;
– the corruption of the authorities;
– the weak border control, the lack of a migration registration system;
– international development strategies;

– lack or inadequate, non-working legislative framework (regarding migration, combating the human trafficking, the protection of victims and witnesses);

– informational factors (the low level of information regarding the realities of the labor market or the standard of living abroad, the real possibilities of employment in the field of work abroad, as well as about the consequences of illegal work);

– the „advantageous" geographical location (being between Romania and Ukraine and having a small territory) traffic routes lead through all the Republic of Moldova, thus becoming a transit country.

Among the external factors, we can mention [6]:

– the borders opening and the widening possibilities for the citizens of the Republic of Moldova to travel to another country;

– the deepening of the divergence between rich and poor states;

– the internationalization of criminal groups;

– the high profits following the trafficking of women;

– armed conflicts.

Towards the beginning of the 20th century, the term trafficking usually referred to the "white slave trade", which represented the movement across international borders of women and children for the purpose of prostitution. Only towards the end of the 1990s, trafficking was associated with prostitution and the sexual exploitation of women and children [7, p.8].

Discussions and results obtained. On 29 January 2020, the European Commission published the new work program under the fifth priority – "Promoting our European way of life", where it announced its intention to launch a global strategy on this topic, which was planned to be adopted in the first quarter of 2021.

In its Security Union Strategy, adopted on 24 July 2020, the Commission mentioned the adopting a new comprehensive approach to human trafficking among its key actions to combat organized crime.

In their joint report on the implementation of Directive 2011/36/EU on preventing and combating trafficking in human beings, the Committees on Civil Liberties, Justice and Home Affairs (LIBE) and Women's Rights and Gender Equality (FEMM) of the European Parliament requested the Commission to adopt quickly a specific EU strategy to eradicate human trafficking. Parliament as a whole adopted the report on 10 February 2021.

Five days later, on 15 February 2021, the European Commission published a roadmap for a communication on an EU strategy to fight organized crime (2021-2025) and a related communication on an EU strategy to fight human trafficking (2021-2025), with an opportunity to provide feedback until March 15, 2021. The Commission presented both strategies on 14 April 2021 [8].

Thus, the Strategy to combat human trafficking (2021-2025) focuses on crime prevention, bringing traffickers to justice, protecting and empowering victims. It builds on the EU's comprehensive legal and policy framework to tackle human trafficking, rooted in the Anti-Trafficking in Human Beings Directive.

In order to ensure the harmonization of national legislation to international legislation, the Parliament of the Republic of Moldova adopted a number of national normative acts regarding the fight against THB: On October 20, 2005, the Parliament of the Republic of Moldova adopted the Law on the Prevention and Combating of Trafficking in Human Beings [9], benefiting from the support of the international community and the active participation of civil society. The international experts of the Council of Europe gave assistance in the establishment of legal provisions in accordance with the provisions of international agreements. The law influenced the institutional structure of actions to combat THB in the country, the obligations of the agents involved, the main directives to combat and the rights of victims, etc.

Based on the normative framework for combating pimping and human trafficking, which is much larger than those presented above, we can identify several vulnerability factors that indicate the negative impact of pimping and human trafficking on society [10]:

The community (the residence in a poor region);

The relationship between the phenomenon of women's trafficking and poverty is directly proportional. This statement is explained by the fact that in regions with a precarious economic situation, young women are the most vulnerable to this phenomenon.

In turn, the negative influence of poverty is manifested through [11]:

- the reducing the possibilities to continue their studies;
- the reducing the number of jobs;
- reduced possibilities of material independence in relation to the family they come from;
- the abuse and the family dysfunction.

As I mentioned above, having a precarious economic situation, the young women are the most vulnerable to this phenomenon, and the vulnerability of young women to trafficking increases in abusive environments, when young women are victims of physical, mental, economic and sexual abuse and violence, such as and in neglectful environments, through the adult's refusal or inability to communicate adequately with the child [12].

People for whom the desire for material independence is at the forefront are more easily manipulated by traffickers than those for whom other values prevail.

A successful model of migration, for example knowing a case, the history of a person who had success abroad, has a decisive influence on the potential victim when making the decision to go abroad, respectively becoming easily manipulated by traffickers. For vulnerable young women, the existence of a model of success abroad contributes to increasing the willingness to go abroad, due to [13]:

- the people of the respective model as assurance that there is no failure abroad;
- the manifestation with greater intensity of the mirage of foreignness;
- the increasing trust in the recruiter and in his reports.

The studies on the origin of the victims of trafficking in women show that the whole country was affected by this scourge, at the same time the focal areas being considered the big cities – Chisinau, Balti, which represent both the point of origin of the victims and the first point of contact of the potential victim, non-original from the city with the recruiter, the rural localities in the south of the republic and those on the border with Romania and Ukraine [14].

The specific structure of the traffic crime consists in the connection between transportation, the use of means of coercion and deception and the purpose of exploitation. The methods of coercion and deception can only be demonstrated with the help of the victim's confession. That is why the judicial processes in the cases of trafficking depend to a great extent on the incriminating statements of the victim [15].

This fact increases the pressure exerted on the victim: well-paid defense lawyers succeed in distorting the victim's confessions and put her credibility in a dubious light. There is an imbalance in courtrooms between victims and criminals, because victims are often unaccompanied and do not receive legal assistance [16]. If adequate procedural measures are not offered or implemented to protect the dignity and safety of victims, repeated cases of humiliation and victimization may occur. Victims suffer from secondary victimization when they learn that investigative bodies or the judge question their testimony or treat them with disrespect.

In addition, victims do not possess extensive or detailed knowledge of the organizational structures or individuals involved in the trafficking process. This fact can lead to failed indicated trials, which would also present a high risk for victims and witnesses [17].

Therefore, victims have a lot to lose and little to gain when they submit a complaint or stand

as a witness.

There are other reasons that prevent a person from filing a complaint or playing the role of a victim [18]:

1. The victim is afraid of being subjected to a criminal investigation, in which her presence is equivalent to the recognition of the fact that she lived and worked illegally in the country of destination and of being prosecuted in her country for the practice of prostitution;

2. The victim knows about or fears corruption and the relationships between official bodies and traffickers;

3. The victim is threatened with possible revenge from the trafficker, and the legal authorities are unable or unwilling to offer her protection;

4. The victim is ashamed and traumatized by the work or services she had to provide and does not want her relatives and acquaintances to find out what she went through;

5. The victim fears that her complaint will not have the desired effect because of prejudices, such as prejudices about prostitution.

In **conclusion**, we note that trafficking often includes complex cases of crossing the border involving traffickers of different nationalities and a multitude of places where the crime is committed, and therefore this process exceeds the action capacities of national criminal prosecution bodies. In particular, people who organize crimes and at the same time remain in the shadows are subject to minimal risk.

In addition, due to the enormous profitability of trafficking, the very low number of successful prosecutions has an almost non-existent impact on the trafficking business as a whole. Any trafficker arrested, any criminal structure that is destroyed, any trafficked person that is released, will soon be replaced by other people.

With certainty, the fight against proxenetism and human trafficking suppose a political activity and initiative on the part of the power bodies both at the national and international level, requiring the development of appropriate methods for the opposition and limitation of the sex-services market.

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THE IMPACT OF SOCIAL FACTORS ON JUVENILE CRIMINALITY IN THE REPUBLIC OF MOLDOVA

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Summary

Since the independence of the Republic of Moldova, many parents or their surrogates have gone abroad with the aim of earning a living and providing a decent life for their family members and children, leaving their children in the care of close relatives or others. With the rapid development of information technologies and the accessibility of mobile applications, many children gain excessive freedom and almost unlimited access to all types of information, with the ability to communicate and interact with anyone. The considerable number of minors left without necessary supervision has led to undesirable behaviors which, in the absence of proper discipline and positive educational influence, evolve into behavioral deviations, some of which even result in severe consequences for society members.

Keywords: parents, abroad, interaction, communication, supervision, minors, juvenile delinquency, discipline, educational influence, behavioral deviations.

Introduction. During the year 2022, a report developed by the Minor Safety Section within the National Public Security Inspectorate, highlighted relevant peculiarities of juvenile delinquent behavior compared to the previous year. The analysis of minors' behavior was conducted by police officers, identifying a total of 169 minors in various risk situations [1]. Out of these minors, 85 were identified as having histories of running away from home or other forms of placement. Another 38 minors were detected wandering, and 7 minors were involved in begging. Additionally, 39 minors were reported for manifestations of deviant behavior.

Besides these cases, the report emphasized a concerning issue related to the consumption of illegal substances. In total, 27 minors were detected under the influence of these products. Among them, 20 were identified in a state of alcoholic intoxication, 4 were documented for the use of narcotics, and 3 minors were categorized in other situations related to the influence of prohibited substances.

The annual analysis also included detailed statistics of minors brought to the territorial subdivisions of the police. In total, 879 minors were brought in during the year 2022, of which 510 were suspected of committing crimes or misdemeanors. A number of 245 minors were brought in

as victims, and the remaining 124 for other reasons.

During the analyzed period, criminal activities involving minors recorded an increase of 1.44% compared to the corresponding period of the previous year, with a total of 705 crimes committed by or with the participation of children. The study of the structure of juvenile criminality highlighted a predominance of low-severity crimes, involving 771 children. Serious crimes were committed by 188 children, while minor offenses involved the participation of 74 children. Additionally, the criminal phenomenon includes exceptional cases, with 3 children involved in committing exceptionally serious crimes and another 3 children in committing particularly serious crimes.

The analysis of the regional distribution of crimes committed by minors shows a greater concentration of these activities in urban areas, with 593 children involved, compared to 446 children from rural environments. This report indicates a prevalence of 57.07% of juvenile crime in urban areas, compared to 42.93% in rural areas. These figures underline a concerning trend of the criminal phenomenon concentrating in urban areas, which calls for increased attention in formulating and implementing prevention and intervention strategies.

Methods and materials applied. To effectively analyze the impact of social factors on juvenile crime in the Republic of Moldova, our study integrated a combination of qualitative and quantitative methods. This multidisciplinary approach included documentary analysis, observation, critical analysis, synthesis, and deduction, thus facilitating a deep understanding and detailed exploration of the dynamics of these factors and their effects on the delinquent behavior of youth. These methods allowed us to provide a comprehensive perspective on the complex issues influencing juvenile crime in this context.

Discussions and results obtained. The present study addresses the distribution of juvenile delinquency based on geographic area and the population density of children aged between 10 and 18 years. The data collected for this study reveal significant differences between various regions of the Republic of Moldova in terms of the number of crimes committed by minors.

Chisinau City, with a population of 63,195 children, recorded 268 crimes involving minors, indicating a significant urban concentration of juvenile criminal activity. In contrast, the Northern region, with a larger child population of 91,236 minors, reported 214 crimes. This discrepancy may suggest differences in the effectiveness of prevention and intervention measures between urban and rural areas.

The Central region recorded 171 crimes with a child population of 110,019, demonstrating a lower crime rate compared to the population density. The Southern region and UTA Gagauzia, with child population densities of 54,619 and 16,291 respectively, recorded only 46 and 4 crimes. These figures may reflect regional variations in community supervision and access to resources for youth.

Similarly, in a recent study on juvenile delinquency, it was observed that out of a total of 705 recorded crimes, 1,039 children were involved, among which 974 were boys and 67 were girls. From this total, 70.07% (728 children) were held criminally responsible. The age distribution was as follows: 353 children of 16 years; 345 of 17 years; 167 of 15 years; 125 of 14 years; 19 of 13 years; 15 of 12 years; 6 of 11 years; and 9 under 10 years.

A detailed analysis of the nature of the crimes reveals that 106 offenses were committed in groups, 35 while intoxicated, and 95 offenses were committed by repeat offenders. From the perspective of the family status of the involved minors, 497 came from complete families, 171 from incomplete families, 78 were separated from their parents, and 29 had no stable home.

Comparing the environment of origin, 593 children were from urban areas, compared to 446 from rural areas. Interestingly, 1,013 children committed offenses for the first time, while 26 were repeat offenders.

Regarding the educational and occupational situation, 328 children were neither employed nor in education. Of those in educational institutions, 33 were in special education institutions, 9 were students, 6 attended middle schools, and 2 were students in higher or special secondary education institutions. Additionally, 17 children were conditionally sentenced, 47 were intoxicated with alcohol, and one was under the influence of narcotics at the time of committing the offenses.

In the Police Report for the year 2023 [2], it is indicated that, out of the total number of crimes recorded by the Police subdivisions, 2.09% are crimes committed by minors or with their participation. Thus, minors and with their participation committed 449 crimes, recording a decrease of -35.95% compared to the analogous period of the previous year 2022 saw the participation of 735 minors in crimes, of which 684 were boys and 51 were girls. Criminal prosecution was concluded in 417 cases, of which 339 were sent for trial. It is noteworthy that the majority of offenses were committed by minors aged 17. It should be mentioned that 723 children committed offenses for the first time, while 12 children committed repeated offenses.

During the 12 months of 2023, 3,687 individuals were detained and placed in pre-trial detention facilities within the territorial Police subdivisions. Of these, 3,611 were criminally detained (3,287 men, 272 women, 52 minors).

Additionally, it is specified that in 2023, there were 1,976 road traffic accidents, and 102 minors were deemed at fault for causing these accidents.

Apart from the data mentioned, no more detailed information regarding juvenile delinquency for the year 2023 has been published on the official pages of the Police.

In this article, we aim to identify and analyze the social factors and their impact on juvenile crime. For a clearer understanding, we will use methods of statistical research, observation, and comparative analysis.

A rationalist perspective [3] on crime and punishment emerged at the end of the 18th century, promoted by Cesare Beccaria, who applied Enlightenment principles to the penal system. The function of justice is to protect individual liberties. The purpose of punishment would be to instill a fear of sanction.

In the 17th and 18th centuries, representatives of English philosophy perceived delinquency as a native deviation from rules of conduct. In this context, morality and immorality were considered native characteristics of the psyche.

Similar to this concept is the theory of Cesare Lombroso, according to which the criminal, characterized by a series of degenerative stigmata, is born devoid of any moral sense. He would formulate the thesis of the born criminal, genetically failed, degenerate. Included in the category of criminogenic constitution theories are genetic theories. The justification for such theories stems from the fact that geneticists have found that deviations from the normal karyotype are more frequent in delinquents. Hence the hypothesis of a genetic component of delinquency.

The earliest attempts at a psychological explanation of delinquency attribute to the criminal a distinct personality. According to these, the delinquent is a psychopath, a “mental degenerate”, who has inherited certain psychological qualities that drive him to antisocial behavior.

According to another theory (psychoanalytic), a child comes into the world as a purely instinctual being, governed by the pleasure principle, which is gradually opposed by the demands of the reality principle. Delinquent behavior is determined by the presence of intra-psychic conflicts of childhood, traumas from this age will have lifelong consequences. Psychoanalytic-oriented analyses attribute to the young delinquent a neurotic structure, manifested through intra- and interpersonal conflicts, generated by the moments of superego formation. Deficiencies in maternal affection or the absence of identification with the father could generate traumas that reappear in adolescence as an identity crisis, generating impulsive and aggressive acts projected onto others.

According to the theory of differential associations, it is considered that criminality is nei-

ther innate nor results from acquired psychic dispositions, but is learned during socialization through interaction and communication, just as obeying laws is learned. Through interaction with their peers, children can develop attitudes and values that make them more or less likely to conform to social norms. Thus, deviance is a usual result of the presence of a deviant subculture, where people learn norms and antisocial behaviors. All people can learn values and norms called antisocial; what matters is the frequency of contacts with these values and norms, their duration, intensity, and the age at which these contacts occur. Children, having less experience, are more vulnerable to influences that lead to delinquent behavior. This influence can be exerted in several ways – criminal behavior is learned, occurs in interaction with other people, and is the result of influences exerted by certain groups, etc.

In this context, it is noteworthy that Article 18.2 of the United Nations Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), annexed to UN Resolution 40/33 of November 29, 1985 [4], emphasizes the importance of the family, which, according to paragraph 1 of Article 10 of the International Treaty on Economic, Social, and Cultural Rights, is "the natural and fundamental unit of society". Within the family, parents have not only the right, but also the duty to maintain and supervise their children.

Analysis of previous studies that examined the social factors and their impact on the deviant behavior of minors. Within the project "*Improving Policy Development in Eastern Europe and the Commonwealth of Independent States through Strengthening Capacities for Ex-ante Impact Assessment*" [5], which involved four countries – Bosnia-Herzegovina, Croatia, Moldova, and Serbia – an initiative developed by UNDP and Local Government in partnership with the Public Service Reform Initiative of the Open Society Institute, vulnerable groups identified for Moldova were: trafficking victims, poor children, youth, low-income groups, people with tuberculosis, the elderly, and women.

Additionally, in the Republic of Moldova, the Social Assistance Law [6] identifies the main groups vulnerable to social exclusion, who, due to a combination of social risk factors, require assistance and support. These groups include children and youth at risk, families without income or with low income, families with many children, people with disabilities, and the elderly. Largely, these groups have been reconfirmed by research in the field of poverty, which identified as vulnerable groups families with many children, individuals from households engaged in agriculture who, due to low incomes, are most at risk of poverty, the elderly, people without education and professional skills or with a low level of training, and the unemployed.

According to the study mentioned, which was published in 2010, in addition to the traditionally vulnerable groups, in the last 5 years up to the completion of the study, a specific group at risk of social exclusion has emerged in Moldova: labor migrants abroad and their families.

According to a study conducted in 2012 by the Institute of Penal Reforms with the support of UNICEF-Moldova and the Swedish Embassy in Chisinau, it was found that the family environment is an essential factor for controlling juvenile delinquency in the Republic of Moldova. Experts believe that for the reality in our country, a stricter family environment contributes more to abstaining from committing certain acts than excessive permissiveness. Mostly, delinquent acts have been observed in single-parent families. In this case, it was not only about divorced families or where one of the parents had died, but also about those families where one parent is working abroad. Even more alarming situations occur in cases where both parents are gone, and the children are left in the care of older siblings, grandparents, or other relatives.

Negative factors affecting children whose parents are abroad lead to them becoming consumers of alcohol or drugs; frequenting bars and nightclubs without supervision; experiencing states of depression and aggression; being unable to manage their money; exhibiting age-inappropriate behavior.

In situations regarding single-parent families, where one of the parents does not live with the children due to divorce or death, the crimes committed by children are more in the realm of thefts, also caused by poverty. In situations when parents are working abroad, the crimes relate to breaches of public order, bodily injuries, etc.

There have also been unusual situations, for example, a child began committing delinquent acts upon finding out that his parents were adoptive, even though he had normal living conditions. Other social causes [7]:

a) The transition from one lifestyle to another, from rural to urban living, can lead to deviant behaviors. It has been noted that in conditions of rapid industrialization and urbanization, some individuals fail to quickly adapt to the new situation, leading to dysfunctions in the socialization process.

b) In current conditions, there is an early psychological maturation of children, often in conflict with delayed social maturation, which involves prolonged schooling and delayed entry into active social life. Often, minors, wanting to appear more mature, try to imitate the behavior of adults to be considered adults themselves, thus potentially committing antisocial acts and crimes, believing that this demonstrates their courage and maturity.

c) Another cause could be some deficiencies in the activity of social control and educational guidance institutions: judicial bodies, representatives of educational institutions, social services, etc. The lack of responsiveness, failure to record all situations requiring special protection measures, creates favorable conditions for a child's behavioral deviance. Thus, in cases where it is proven that the family is a harmful environment for raising and educating the child, social services should act to remove the child from this environment and place them in a specialized protection institution.

In the study conducted by the Penal Reform Institute of the Republic of Moldova in partnership with the Finnish Embassy in Bucharest, published in 2015, which researched domestic literature on the issue of juvenile delinquency, it is concluded that poverty, inadequate supervision of children due to emigration, rising unemployment, a large number of young people disillusioned with reforms, insecure, desperate, exacerbated social tensions, and the regression of moral values are just some of the reasons for delinquency. In this regard, it is recommended to intensify collaboration between various public authorities and legal organizations. Protective measures for vulnerable families, development, and strengthening of the role of the family, school, and community are necessary. Another direction would be the development of collective services, creation of local surveillance and prevention guards, establishment of a unified justice system for minors, and reintegration and reinsertion of judicialized youth. Also necessary is the creation of socio-psychological services for social-penal assistance, cultivation of civic spirit, and a correct public perception of the issue of juvenile delinquency [8].

Similarly, the research notes that in the Republic of Moldova, there have yet to be developed fundamental and applied studies that would allow the development of strategies, plans, and programs for preventing juvenile delinquency.

In light of the findings, conclusions, and recommendations found in the literature, however, there has not yet been a reduction in juvenile crime observed.

As we examine the contribution of each social risk factor such as poverty, family conditions, educational level, influences of the peer group, and exposure to violence and abuse in shaping the delinquent behavior of youth, our detailed analysis relies on rigorous methods of statistical, observational, and comparative research to provide a complete picture of their impact on juvenile crime. Particularly, we are interested in those factors [9, pp.73-76] that play a predominant role in either positive or negative socialization of individuals, ultimately leading to the commission of antisocial acts.

The family has multiple valences. Firstly, it plays a socializing role, imprinting a certain value standard on the child, as well as attitudes that are either aligned with or opposed to certain social values. The family provides the child with an indispensable guarantee for achieving intellectual, social, and cultural maturity, as well as a personal identity, according to which they will be accepted as a social partner. Any disruption within the family structure has significant effects on the child, both in terms of their adaptation to society and the structure of their personality. The socializing role of the family becomes increasingly diminished, especially regarding teenagers, due to early schooling and other factors such as the press, television, cinema, and the micro-groups they join.

One of the most significant criminological studies concerning the influence of family disturbances on juvenile delinquency was conducted in America by the Gluecks, who in their work "*Unraveling Juvenile Delinquency*" found the following: a significant number of delinquent children had changed residences during childhood, were poorly maintained materially and hygienically, had divorced or unmarried parents, and were deprived of cultural benefits. The personality of delinquent children is more amorphous and lacking ambition in the face of life's demands, their behavior norms being fewer and lacking substance. Often, they are stressed due to the reduced cohesion of their families, the state of tension between parents, the unfavorable family atmosphere, lack of supervision, and even lack of interest from the parents. Delinquent children exhibit an attitude of hostility and indifference towards their family and society. Divorce and the loss of divorced or lost families are major criminogenic factors for delinquent children. Moreover, criminal families involve their children in criminal activities or guide them towards imitation, lending them moral precepts contrary to societal ethics. In this case, delinquency results as a conflict between the culture of the criminal family and that of society.

For example, in a locality in the Republic of Moldova, a father, previously convicted for theft, when his wife was not at home, making sure that the neighbors were also out, would enter during the day into the neighbors' cellar from where he would steal jars of stew and other food, involving his two children, aged 9 and 12, who waited by the fence. He passed the jars to them and went back for more, and they would hide them in the spots he indicated. After he returned home, he made all five children eat everything, after which, what was left, he disposed of in less accessible places, ensuring that the children would not tell anyone else, but especially not to the wife, who did not tolerate such behavior and in several previous instances she had learned of, had warned him that she would divorce if it happened again.

School education level. A long-studied issue is whether criminality is qualitatively and quantitatively influenced by the level of school education. Quantitatively, there are no visible consequences in the criminality landscape. Qualitatively, the level of school education is reflected in the choice of less primitive forms of criminal activity. The role of the school is more important for the education and socialization of children, for identifying those who are maladjusted by implementing general prevention programs.

In a locality in the Republic of Moldova, a 14-year-old minor attended school daily but was only physically present without engaging in the learning process. After classes, he would bring his bag of books home, then tell his parents he was going out to talk with friends and classmates. One evening, the minor drank alcohol with several adults, previously convicted for various crimes. When the alcohol ran out close to midnight, they decided to send him to buy wine from an elderly person in the locality. When the elderly person came out to see what the noise was about, they saw the minor, but upon refusing to sell him alcohol, went back inside their house. A few minutes later, hearing noise again and coming outside, the elderly person was struck from behind by the minor, on the head and other parts of the body with a wooden object, causing fractures to the hands and legs and other bodily injuries.

Impact of leisure activities. Free time is increasingly spent outside the family environment. Also identified are new and potentially dangerous ways of spending free time, such as forming groups or gangs that deliberately engage in committing crimes. Criminologists assert that these acts should be seen as a form of youth interaction, a way of spending free time together. In most cases, these activities remain at a stage not involved in crime. However, the criminogenic aspect must be noted, as for certain situations, there is adherence to the spirit of violence with severe social effects. The role of increased delinquency as a result of the impact of leisure activities is inseparable from the social integration issues. In this sense, the economic and social non-integration of young graduates causes states of frustration and imbalance that generate criminality.

In the process of verifying the circumstances in the case of the 14-year-old minor, police found that there had been repeated instances where the minor did not return home for several days, but the parents did not notify the police or other authorities. Although the minor regularly attended school, he did not engage at all in the learning process. His free time was spent with adults, previously convicted, engaging in smoking and alcohol consumption.

Several months after the incident involving the elderly person, who refused to sell him alcoholic beverages, the minor took the life of one of the adults he spent time with, and was later convicted for the described actions. In the context of the absence of proper parental supervision, the lack of school involvement in educating and socializing the child, and the absence of preventive programs for the maladjusted, being exposed to undesirable behaviors of previously convicted individuals, the minor's behavior evolved into one with major negative effects on society members.

Impact of mass media. Studies have shown the often-negative influence exerted by the mass media. Western criminologists have highlighted media violence, particularly video violence. Research focused on this aspect has found the following: a) Violence on the small or big screen provides models of negative behavior. It is noteworthy that these films have a commercial status, made to maximize profit from their sales, and therefore unreservedly tackle themes with effects on human instinct and the unconscious. The influence is stronger on the young viewer; b) It leads to an increase in the level of aggression among viewers of such films or shows; c) it desensitizes the audience to the serious harm caused by violence. Violent programs lead to disinhibition of the viewer and detach them from reality, causing them to commit spontaneous and unplanned violent acts through imitation. In the same vein and with similar implications, especially on young people, comes pornography.

For example, in 2017, the social media game 'Blue Whale' and other similar games became widespread, where minors would self-harm and inform their acquaintances/friends to at least try it too. Children who agreed to play received tasks from administrators regarding the time, place, and method of self-mutilation to apply, and due to the lack of parental control, the game spread rapidly.

Drug addiction includes the consumption of drugs and alcoholism. Alcoholism is an important criminogenic factor, causing mental disorders with effects on criminal behavior; the alcoholic state as a criminogenic factor is directly influenced by psychopathic and neurotic temperament. Two fundamental states of alcoholism can be described: a) Acute alcoholism can be evident both in a mild form and in a severe form: – mild intoxication is accompanied by a decrease in attention and an extension of reaction time, causing a considerable number of unintentional offenses committed out of carelessness and negligence. Thus, most traffic accidents are due to alcohol; – severe intoxication causes a typical state of mental confusion, exaggerates sexual needs into a state of delirium and aggression, to which a significant part of violent offenses is attributed; b) Chronic alcoholism fundamentally alters the individual's mentality and develops aggression and impulsivity. It is accompanied by a loss of ethical and moral senses, leads to theft, abuse of trust, family abandonment, etc., provokes jealousy, and the commission of violent crimes.

Narcotics are a social phenomenon, manifesting in cases of drug addiction as well as in drinking and alcoholism. Drug addiction is the morbid habit of using narcotics, developed through dosing and systematic overdosing in the human body. Individuals who use narcotics without a doctor's prescription are called drug addicts.

In a locality in the Republic of Moldova, a minor lived at a sheepfold with his mother and brother. The mother worked occasionally and consumed alcoholic beverages, without engaging in the education and supervision of the children. The older minor began to skip school and run away from home. The mother did not report these incidents to the authorities. After some time, the minor was found by law enforcement in Chisinau City, in an abandoned building where waste was illegally stored. It was found that there had been several similar cases, but his mother had not been convinced to correct her behavior. The local guardianship authority initiated the necessary procedure for stripping the mother of her parental rights, however, the court did not accept the removal, and due to her lifestyle, the mother eventually lost her sight. As a result, the minor, who had reached the age of 15, was found in a state of drug intoxication. While using illegal substances, he committed acts of hooliganism, and when not using, he stole goods for various purposes.

Thus, synthetic drugs are increasingly used, having a destructive impact, many of which are not detected during narcological testing, complicating the efforts to detect and combat the spread of the phenomenon.

Social factors include the structure and interactions among family members and peer influences. Studies have shown that single-parent families, meaning those with divorced parents, parents in detention (Murray, Farrington, Sekol & Olsen, 2009) [10] or parents working abroad (Irimescu & Lupu, 2006) [11], are a risk factor in children developing delinquent behaviors [12].

At the same time, parental styles and practices influence children's behavior. Parental monitoring is associated with fewer delinquent acts by children, family dinners have been associated with less aggression, while poor supervision by parents has been correlated with smoking ~~in~~/among girls.

However, the strongest predictors for early development of delinquency are given by the large number of family members and the criminal history of the parents. Peer influences have also been investigated in relation to the development of delinquent behaviors in children.

In the context of intra-family conflicts, the peer group is very important for adolescents, with conflicts with parents leading children to choose delinquent groups.

According to the analysis [13] of the situation of children and adolescents in Moldova, published in 2022 by the UNICEF office in Moldova, one of the main chapters of public expenditure is education. Total spending on education in 2020 was about 24% of the total state budget, 17% of the national public budget.

Education spending is relatively stable – in 2016, it was 5.7% of GDP (Ministry of Finance, 2018). Education spending is relatively high in Moldova compared to other countries in the region. In 2018, the share of education expenses from GDP was 5.4% for Moldova (3.5% Georgia, 3% Romania, and 2.7% Armenia) and is increasing (World Bank, 2021). The largest increase in education sector spending has been aimed at improving the quality of food in schools, increasing the remuneration of educational staff, textbooks and supplies, as well as capital investments.

Social welfare is the main tool for providing support and protection to vulnerable children and families, but it remains inefficient. The proportion of households with children from the poorest quintiles receiving social benefits (social assistance or child allowances) remains low or is even regressing. The baseline was 29.2 percent at the start of the current country program, and data from 2020 show a level of 22.9 percent. Social assistance expenditures in Moldova were about 13% of the national budget in 2018 and are continually decreasing (the same quota was 16% in 2016) (Expert-Group, 2018) [14]. In 2018, about 94% of the total social assistance expenditures

consisted of social benefits and 6% in social services (Expert-Group, 2018). The total amount spent on social assistance for children and their families is not available. One of the main social assistance benefits is the guaranteed income support based on income, which consists of two benefits: social assistance and assistance for the cold season. In 2019, over 14,000 families with children received social assistance, with an average amount of 1,579 lei per person per month. At the same time, the minimum subsistence threshold for a person in 2019 was about 2,031 lei [15]. While social assistance aims to reduce poverty, its impact on it is low. This is due to inadequate amounts and a very limited scope of application of social assistance. Moreover, the social assistance scheme is designed in a way that encourages dependency on the system and has high administrative costs. Other social assistance benefits aimed at children and families (e.g., the state social allowance for children with disabilities and for orphaned children) are also inadequate and do not cover the real needs for which they are intended.

The majority of the national budget goes to financing social protection: 33.3% of the national public budget or about 11.2% of GDP. Social protection expenditures cover two main forms of support: social insurance benefits and social assistance benefits and services. The total expenditures for social protection in the last year have increased, but, in comparative terms, Moldova has a low quota for social protection (Romania – 14.7% of GDP for social protection (2018) [16].

Moldova is in the process of developing the infrastructure of social services. A wide range of social services is provided; some of the services are still offered in a centralized manner or at the community level. Social services are funded from the state budget and local budgets; some services are provided by non-profit providers and are funded through charity works and donations. There is no information regarding the total expenditures for social services in Moldova, nor the total expenditures for social services provided to children. Most services are funded from local budgets.

Children lack knowledge and do not have anyone to inform them about health-risk behaviors, life skills, and sexual education. In these circumstances, they fill the informational vacuum through discussions with peers, internet searches, etc., which do not always provide accurate data. The lack of knowledge in this area is the main cause of sexually transmitted diseases, unwanted pregnancies, and abortions that negatively impact reproductive health.

Children with parents working abroad [17] do not always establish friendly relationships with their peers, either because they are not understood, because they are unwilling to divulge family secrets, due to lack of free time, etc. The support networks for these children are poorly developed, often limited to discussions with class advisors, teachers, psychologists. Migration weakens the child's interaction with migrant parents and the educational institution due to: absence of supervision and control by parents; multiple 'new' responsibilities of these children; misunderstandings by teachers and peers; lack of partnership between family and school, etc.

It must be noted that the long-term effects of this phenomenon are not less significant, as subsequent generations will adopt the migrational behavior of their parents, perceiving and internalizing the family model in which they grew up, including the lack of psycho-emotional responsibility towards their own children.

Regarding the implementation [18] of Law No. 299/2018, the government has not approved any mechanisms for inter-sectoral cooperation to regulate the responsibilities of the actors involved in the targeted area, identifying, assisting, referring, monitoring, and recording children with deviant behavior, as well as interventions by authorities in providing services for children in this category.

Also, Article 20 of the Law establishes that one of the objectives of specialized social services and those with high specialization for children with deviant behavior refers to preventing and combating deviant behaviors in children, yet the legislator has not regulated any preventive

measures or programs for preventing juvenile delinquency, such as: community services, post-care services, specialized services for children with mental health issues and/or dependency on alcohol or other substances, children in conflict with the law who have not reached the minimum age of criminal responsibility.

Conclusions and recommendations. Numerous studies and analyses have been conducted to identify the most important causes influencing deviant behaviors among both adults and minors, in order to mitigate more severe consequences that may arise. Many experts, however, conclude that the environment in which the minor spends most of their time has the greatest influence on their behavior, and the non-involvement or insufficient involvement of parents or their substitutes in educating and supervising the minors' activities fosters indiscipline, which over time contributes negatively in a rule-of-law state.

Currently, the number of delinquent minors from socially vulnerable families prevails, and the state administers mild methods regarding socially vulnerable families, applying various support methods to overcome crisis situations, however, many of the assisted families remain in this regime indefinitely, without personal efforts being made.

In the context of proposing recommendations for public policy, social interventions, and future research directions, two main opinions emerge in society regarding the described circumstances. Thus, some specialists, psychologists, assert that restrictive or abrupt methods would not be effective at a time when some people are already exposed to vulnerabilities. Another opinion refers to the view of some people in society and officials from the social, police, medical, education, etc., fields, who acknowledge that merely providing social support/social aid is not sufficient for rectifying the situation or changing attitudes, especially in situations where support has been provided over a long period, but no personal efforts for recovery are observed.

In such a context, in my opinion, it is necessary to implement programs to make the population of the specified category more responsible.

Another recommendation would be to prohibit parents of children from crossing the state border of the Republic of Moldova without confirmation that the children are left under the supervision of other persons (guardianship, etc.), especially since most children currently left behind were only left based on verbal assurance.

Implementation of parental education programs that focus on the role of parents in raising and educating children or governmental policies for school desegregation.

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ARTICLE 260 OF THE CRIMINAL CODE OF THE REPUBLIC OF MOLDOVA IN THE CONTEXT OF CONCURRENT OFFENSES: IMPLICATIONS AND INTERPRETATIONS REGARDING THE IMPORT, PRODUCTION, AND MARKETING OF SOFTWARE PRODUCTS AND TECHNICAL MEANS

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Summary

This study addresses the critical aspects of Article 260 of the Criminal Code of the Republic of Moldova, focusing on the concurrence of offenses in the context of emerging technologies such as artificial intelligence (AI). It analyzes how criminal legislation can and must adapt to the challenges posed by the use of AI in offenses involving software and technical means. Additionally, the article discusses the necessity for rigorous interpretation of the law to enhance the effectiveness of combating cybercrimes and to ensure equitable justice in the digital age.

Keywords: cyber offenses, artificial intelligence, cybersecurity, concurrence of offenses, malicious software.

Introduction. In the digital age, the exponential growth of technology has been accompanied by a similar evolution in cybercrime, challenging legal systems to continuously adapt to new forms of criminality. The Republic of Moldova, like other countries, faces the increased complexity of cybercrimes which not only breach various legislative provisions, but often overlap, leading to concurrent offenses. These situations present unique challenges in the interpretation and application of the law, given that different actions can simultaneously trigger multiple articles of the Criminal Code.

This article aims to explore and analyze how concurrent offenses are treated in the criminal legislation of the Republic of Moldova, with a particular focus on cybercrimes. By examining Articles 260, 237, 259, 260^1-260^3, 260^5, and 260^6, the author seeks to identify and discuss the legal and interpretative challenges that arise when these offenses are committed concurrently. It also attempts to clarify the impact of these concurrencies on determining penalties and resolving strategies, providing comparative perspectives and recommendations for improving current legislation. Through this analysis, the goal is not only a better understanding of the dynamics of cybercrimes within the legal framework of the Republic of Moldova, but also to formulate concrete suggestions for clarifying and enhancing the legal responses to these complex challenges.

In the legal landscape of the Republic of Moldova, the clear articulation of criminal legislation is essential for the effective and fair application of justice. Article 33 of the Criminal Code of the Republic of Moldova establishes the legal basis for understanding and managing the concurrence of offenses, a crucial aspect in cases where a single person commits multiple offenses before being definitively convicted for any of them. Thus, Article 33, paragraph (1) of the Criminal Code of the RM, clearly clarifies the conditions under which a concurrence of offenses is considered to have occurred: "*A concurrence of offenses is considered to be the commission by a person of two or more offenses if the person has not been definitively convicted for any of them and if the statute*

of limitations for criminal liability has not expired, except in cases where the commission of two or more offenses is provided in the articles of the special part of this code as a circumstance that aggravates the punishment" [1]. This definition is essential for understanding how to approach multiple criminal acts committed by the same person and reveals the complexity of legal interpretation in cases of concurrent offenses.

This regulatory framework not only legally defines the concurrence of offenses but also highlights the need for careful consideration regarding the sanctioning of such situations, particularly in the context of rapid technological evolution. The complexity of concurrent offense cases becomes even more pronounced in the digital age, where criminal acts can be facilitated or masked through the use of advanced technologies.

The impact of technology on criminal legislation becomes increasingly evident as technological innovations continue to advance rapidly. In the context of concurrent offenses, these innovations significantly influence the interpretation and application of laws, presenting unique challenges in adapting the existing legal framework to effectively respond to cybercrimes.

A crucial aspect is how technology facilitates the simultaneous commission of multiple, often interconnected offenses. For instance, complex cyber attacks, such as those involving ransomware, can simultaneously violate laws concerning unauthorized access to information systems and bank fraud. These actions, carried out through a single remote command, can have multiple implications, forcing legislators to reevaluate definitions and punishments to reflect the unified and complex nature of the attacks.

Furthermore, the proliferation of internet-connected devices introduces new challenges. These devices provide new access points for criminals, creating scenarios where vulnerabilities in a single device can be exploited to affect entire infrastructures, thus highlighting the need for a more holistic approach to cyber security in criminal legislation.

Additionally, the use of artificial intelligence (AI) and algorithms for committing or preventing crimes stimulates debates over criminal responsibility. When AI is involved in the commission of offenses, determining the actual perpetrator becomes a complex legal issue, which may necessitate a reevaluation of notions of intent and culpability in the context of concurrent offenses.

According to R.Cojocaru, "The offenses that constitute concurrence can be materialized through both typical forms of criminal activity (consummated offense), and atypical forms (preparation or attempt of an offense). From this perspective, it is irrelevant whether the perpetrator had the same role or different roles (author, organizer, instigator, or accomplice) in committing the offenses" [2].

In analyzing the qualification process of concurrent offenses, it is crucial to understand how the law is applied in practice. As highlighted in the specialized literature.

Exploring in detail the applicable legislation and theoretical complexities of concurrent offenses, it is essential to return to the practical reality of how these laws are enforced in the courts. An illustrative example that highlights these challenges, as well as potential errors in the application of the law, is the case of Bulgarian citizens M.V., V.D., and K.P., involved in banking fraud operations. This case provides us an opportunity to examine how the preparation of offenses intersects with their actual commission and how different stages of criminal activity are treated under the Criminal Code of the Republic of Moldova. A detailed analysis of this case will help us better understand not just the specific application of Articles 260 and 237, but also the broader implications of Article 26 regarding the preparation of offenses.

In July 2014, M.V., V.D., and K.P., citizens of the Republic of Bulgaria were involved in a scheme to install skimming devices in ATMs (Automated Teller Machines, commonly known as cash machines) across the Republic of Moldova, aiming to steal information from users' bank cards. Their actions were classified under art. 46 and 260; art. 46 and art. 259 par. (2) letters b), e), h); art. 26, 46 and art. 237 par. (2) letters c), d) of the Criminal Code of the RM [3].

The importance of preparation in this case is underscored by invoking Article 26 of the Criminal Code, which defines the preparation of an offense as "establishing the plan of the offense or creating conditions for its commission". According to this article, M.V. and his accomplices were involved not only in committing the actual offenses, but also in preparing them by procuring and installing skimming devices.

In the legal context, it is essential to differentiate between preparatory actions and substantive acts, which are integral parts of committing the offense. In this case, the importation of skimming devices constitutes an active part of executing the criminal plan, surpassing the preparation stage which involves planning and logistical organization. This distinction is crucial for the correct application of the law, avoiding overlapping charges and ensuring that each stage of the criminal plan is judged appropriately.

Similarly, in the context of concurrent offenses and the specific application of legal articles, it is vital to understand that each offense requires a clear demonstration of intent and preparation. A. Pareniuc and A. Ghimpu describe the first step in a cyber attack as "*researching the computer system to obtain important information that can be used in the attack*" [4, p. 57]. This perspective is crucial in analyzing the case of the Bulgarian citizens accused of installing skimming devices, as it underscores the necessity of having concrete evidence that the defendants took specific preparatory steps, rather than acting randomly.

To convincingly establish the preparation for the offense of illegal access to a computer system, according to Article 259, it would be necessary to demonstrate that M.V., V.D., and K.P. had prior knowledge about the specific types of ATMs they intended to target. Such details not only show meticulous planning, but are essential to differentiate between a prepared act and an opportunistic attempt. In cases where preparation is involved, it is expected that the defendants would have previously identified which ATMs are susceptible to attacks and would have had detailed knowledge about their security systems.

The need to demonstrate specific and deliberate knowledge can also depend on how evidence is gathered and presented. In some legal situations, demonstrating such prior knowledge can be decisive in determining the severity of the charges and the penalties applied. This illustrates how important it is for prosecutors and lawyers to be meticulous in collecting and presenting evidence that supports each aspect of the charge in cases of concurrent offenses.

Thus, in the case mentioned above, the court applied separate penalties for each offense, reflecting the seriousness of their actions. This case illustrates the legal complexity in cases of actual concurrent offenses, where the preparation and execution of the offenses are closely linked and require careful assessment by the courts.

This analysis reveals how the preparation of offenses can complicate the interpretation and application of the law, especially in the case of advanced technological and transnational crimes. Discussing this case underscores the need for legislative clarifications and the improvement of authorities' training to effectively manage the technological and legal complexities of modern crimes, while ensuring that the distinction between different phases of the crime is clear and well-founded.

Furthermore, in analyzing the qualification process of concurrent offenses, it is crucial to understand how the law is applied in practice. As highlighted in the specialized literature, "The basic rule in qualifying concurrent offenses resides in the fact that the person authorized with the application of criminal law, implicitly with the qualification of offenses, will indicate in the procedural-legal document (the order to initiate criminal prosecution, the order of indictment, the indictment, the conviction sentence) all the articles, as applicable, paragraphs, letters from the special part of the Penal Code that incriminate the specific criminal acts committed that are in concurrence, and in the case of uncompleted offenses or those committed in participation, the norms from the general part of the Penal Code" [5, p.23].

If we talk about an actual concurrence of offenses, we could use, for example, the situation where an offender initially developed malicious software to manipulate the computer systems of a financial institution, an action that falls under the provisions of Article 260 of the Penal Code of the RM. Subsequently, the same offender used this software to alter the financial data of customers and redirect funds to their accounts, according to Article 260^6 of the Penal Code of the RM, which defines computer fraud. These two offenses, although connected by their method and objective, are treated as separate acts within the legislation, each with its specific involvement in the criminal scheme. This situation illustrates how separate, though interconnected, activities can constitute a real concurrence of offenses, with each offense being punished according to its specifics.

For the existence of an actual concurrence, the size of this interval does not matter, that is, the duration of time that has passed between the commission of the concurrent offenses. It is important that this time interval between the commission of the two offenses is not equal to the statute of limitations prescribed for the respective offense. In this case, if there are only two offenses in concurrence, we can no longer speak of a concurrence, there being only a single offense [6, p.234].

Similarly, it is worth noting that according to D. S. CIKIN: "A variety of the single offense is the offense which, as a result of the change in the perpetrator's intention, has transformed into another offense, usually more dangerous from a social viewpoint. In this case, the committed acts must be qualified based on the article of the Special Part of the Penal Code that provides for the liability for the more dangerous offense committed" [7, p.10].

The concurrence of offenses is crucial in cases involving advanced technologies, where seemingly independent actions can contribute to a combined criminal outcome, such as the use of illegal software for bank fraud and unauthorized access to personal data. In the USA, the concept of concurrence of offenses is treated in two main forms: actual concurrence (committing multiple offenses through separate acts) and formal concurrence (multiple offenses committed through a single act). For example, committing hacking to illegally access information and using this information for financial fraud can be treated as a formal concurrence of offenses. For instance, in the case of computer crimes:

Actual Concurrence: According to Title 18, Section 1030 ("Fraud and related activity in connection with computers"), committing separate acts involving unauthorized access to computers and the illegal use of obtained information can constitute separate offenses. If an individual commits hacking to illegally access a system and then separately commits financial fraud using the obtained data, this could be considered an actual concurrence of offenses.

Formal Concurrence: The same title and section mentioned above can be applied in a context of formal concurrence, when a single action, such as a cyber attack that simultaneously exposes confidential information and causes material damage to a company, commits multiple offenses through the same conduct [8].

To clarify how the concurrence of offenses is addressed in European countries, we can take the example of Germany, where criminal legislation provides specific treatments for offenses related to malicious software. In Germany, the Penal Code (Strafgesetzbuch – StGB) regulates offenses related to malicious software, such as the distribution of computer viruses. Offenses related to unauthorized access to information (paragraph 202a StGB), data damage (paragraph 303b StGB), and computer sabotage (paragraph 303b StGB) are strictly treated. If a person, using a single act, commits multiple offenses, such as unauthorized access to a computerized system and using this access to install malicious software that damages data, these actions will be treated as an ideal concurrence of offenses. This means that the respective action or inaction meets the elements of several separate offenses [9].

Reflecting on the concept of ideal concurrence of offenses, we observe that it involves a

complex legal situation where a single action or inaction of an individual fulfills the constitutive elements of several different offenses. As stipulated in Art.33, para.(4) of the Penal Code of the RM: "Ideal concurrence exists when a person commits an action (inaction) that meets elements of several offenses", demonstrating the intersection and overlap of legal norms [1]. This interpretation not only highlights the direct applicability of criminal law, but also opens the discussion on how various branches of law can interact in evaluating and sanctioning such cases.

To deepen the understanding of the ideal concurrence of offenses, we can consider the case of a programmer who develops malicious software intended to commit cybercrimes, simultaneously violating Art. 260 and Art. 185^1 of the Criminal Code of the RM. This programmer, by creating and distributing the software, not only facilitates the commission of cybercrimes, but also violates the copyright of the source code used without permission.

Through this single action of development and distribution, the perpetrator fulfills the constitutive elements of both offenses: Art. 260 of the Criminal Code which penalizes the production and distribution of technical means intended for the commission of cybercrimes; and Art. 185^1 par. (1) letter a) of the Criminal Code of the RM, which sanctions the unauthorized reproduction and use of works protected by copyright. This example illustrates the complexity and legislative interdependence between technological offenses and intellectual rights, underscoring the need for a careful and integrated judicial approach that simultaneously reflects the aspects of computer law and intellectual property within the same legal framework.

The distinction between ideal and actual concurrence is relevant in terms of evaluating the dangerousness of the offender, as generally, actual concurrence indicates a higher social danger than formal concurrence of offenses [10, p.378-379].

Returning to the discussion on artificial intelligence (AI), it is important to emphasize the complexity that this technology brings to the application of laws concerning the concurrence of offenses. Its use in committing offenses, particularly in the context of Art. 260 of the Penal Code of the RM, which refers to the illegal production, import, and distribution of malicious software, presents complex opportunities for committing an ideal concurrence of offenses. In the digital age, AI can facilitate the automation and escalation of cybercrimes, leading to situations where a single programmatic action can meet the criteria for multiple offenses simultaneously.

For example, a program developed with AI to penetrate security systems can simultaneously commit unauthorized access to information (Art. 259 of the Criminal Code), manipulate data (Art. 260^2 of the Criminal Code), and disrupt the operation of a computer system (Art. 260^3 of the Criminal Code of the R.M.). This is a classic example of ideal concurrence, where a single action – the launch of malicious software – fulfills the elements of several offenses.

The use of AI in committing offenses underscores a crucial challenge: determining culpability. When AI is programmed to perform actions that violate the law, we must explore not only who created or operated the software, but also how current laws can be adapted to address these new forms of criminality.

A critical aspect is how a person can instruct AI to carry out potentially harmful actions without explicitly specifying the nature of the offense. For instance, suppose a person commands an AI system to "optimize profits" for a company by any means necessary. Without clear ethical or legal parameters, the AI might decide to implement illegal strategies, such as manipulating financial data or accessing confidential information without authorization.

This raises serious questions about legal responsibility: who is to blame when AI commits an offense in the absence of a direct and explicit command? Is it the responsibility of the person who configured the AI without setting clear legal limits, or should we look at the creators and operators of the technology for the way they allowed the AI to act independently?

The European Commission also highlights how AI, by its complex and autonomous nature, can intensify the challenges related to the application and interpretation of existing laws in the

context of cyber offenses, which is directly relevant to the discussion on multiple offenses and the concurrence of offenses. In particular, the European Commission document on artificial intelligence emphasizes the need for a consolidated European approach to ensure that the development and implementation of AI align with European values, respecting fundamental rights, including data protection and privacy. It proposes a regulatory framework to manage risks associated with AI, including aspects related to transparency, human oversight, and the reliability of the technology. These concerns are essential when discussing the use of AI in committing offenses, whether it's about producing malicious software or exploiting computer systems in an unauthorized way [11].

Continuing this analysis, it is crucial to develop a legislative framework that can effectively manage not only the technical aspects of crimes committed with the help of AI, but also their ethical and moral implications. This includes revising the notions of intent and action within a legal framework, reflecting the fact that AI can act independently of direct human commands.

Thus, advancing the understanding and regulation of AI's influence on criminality requires a multidisciplinary approach, involving experts from legal, technological and ethical fields. This would help create a justice system adapted to the realities of the 21st century, capable of responding to both current and future technological challenges.

At the same time, in an era defined by rapid technological advances and increasing complexity of crimes, lawyers, prosecutors and judges will face significant challenges in managing cases of concurrent offenses. This reality necessitates a reassessment of how legal professionals are trained and continuously educated to effectively respond to these cases.

Integrating emerging technologies into the legal education curriculum becomes essential. Legal practitioners must not only be familiar with legal principles, but also competent in using data analysis tools and artificial intelligence. These tools are vital for analyzing patterns of criminal behavior and efficiently managing digital evidence, which are increasingly prevalent in modern litigation.

Moreover, a multidisciplinary approach in legal education that combines legal expertise with knowledge of computer science, criminology and ethics is crucial. This not only enriches the understanding of the context in which crimes are committed, but also ensures that legal decisions are informed and adapted to contemporary realities.

These changes in legal training are imperative to ensure that the justice system remains efficient and relevant in the context of rapid technological and social changes. Thus, the laws regarding the concurrence of offenses, as well as their interpretations, must constantly evolve to reflect new challenges, ensuring that justice is administered with integrity and full knowledge.

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SECȚIUNEA I. ŞTIINȚE PENALE
SECTION I. CRIMINAL SCIENCES

CZU: 343.13:343.575

METHODOLOGICAL PARTICULARITIES REGARDING THE INVESTIGATION OF CRIMES IN THE FIELD OF ILLEGAL TRAFFICKING OF DRUGS AND SYNTHETIC DRUGS

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Summary

This article refers to the investigation of crimes related to the circulation of prohibited drugs on the territory of the Republic of Moldova. The content of the article discusses the methods adopted by criminals in order to hide the processes of committing crimes related to drug trafficking, through the latest online stores, messaging applications of mobile phones, about the division of roles of participants in the commission of crimes in the field of drug trafficking, the way to interaction between them. It also points to the causes that keep these crimes latent and provides recommendations to law enforcement bodies regarding some methodological aspects related to the investigation of these types of crimes.

Keywords: drugs, ethnobotanicals, trafficking, illegal circulation, investigation, drug user, illicit distribution, production, manufacture of drugs, transportation of drugs, possession of drugs, apprehension of the offender.

Introduction. Drug-related crime, through its social, economic, medical, cultural, and political consequences, causes considerable harm not only to state interests but also to those of society, many individuals, jeopardizing the lives and health of citizens, and exerting a demoralizing influence on people's consciousness and behavior. Drug consumption and trafficking in the Republic of Moldova are taking on new forms of manifestation, adopted from other states or newly created, due to several factors, including: the free movement of people across the country's borders, the development of new information and communication technologies, and the continuous development of transnational organized crime. In light of these findings, more complex and varied approaches are needed from all actors involved in the fight against the drug phenomenon [6]. In this regard, the absolute necessity for new methodological studies and recommendations on the

forensic aspects of drug crime investigation by law enforcement agencies becomes inevitable.

Methodology. In the process of elaborating the article, the author was guided by a system of scientific research methods, namely: the systemic method, the method of deduction and induction, the method of analysis, the comparative method, statistical analysis, etc. Based on the analysis of relevant materials (national legislation, specialized literature, judicial practice), appropriate conclusions and recommendations are formulated.

Results obtained and discussions. According to the statistical information from the "Statistical Database of Moldova," in 2022, in the territory of the Republic of Moldova (excluding the Transnistrian region and the municipality of Bender), 925 drug-related crimes were recorded[1][2], in 2021 - 818, in 2020 - 995, in 2019 - 1052, in 2015 - 1200. Reported per 1,000,000 inhabitants in 2015, there were 42 drug-related crimes, in 2019 - 40, in 2020 - 34, in 2022 - 31.

The analysis conducted allowed for the profiling of the offender and highlighted the fact that, to a large extent, drug-related crimes in the Republic of Moldova are committed by individuals aged between 18 and 24 years old and over 30 years old, mostly males, often by individuals with no prior offenses, not employed/not in education (not active in social life), but also by those with criminal records. Regarding the age criterion, it is necessary to specify that in the age group of 18-24 years old, there is a growing trend, with a higher number of individuals being investigated for committing such crimes [6].

According to the statistical data from the Public Health Institution "Republican Narcology Dispensary," the number of drug users recorded in the years 2011-2015 gradually increased, and in the period 2016-2018, it decreased as follows: in 2011 - 968 individuals recorded, in 2012 - 848 individuals, in 2013 - 744 individuals, in 2014 - 1049 individuals, in 2015 - 1117 individuals, in 2016 - 603 individuals, in 2017 - 890 individuals, and in 2018 - 668 individuals (statistical data from recent years were not provided). If we compare the number of drug trafficking-related offenses recorded and the number of individuals recorded by the Republican Narcology Dispensary as drug users, we observe an approximate coincidence between them. The conclusion in this case becomes clear: the majority of criminal cases initiated are related to the possession of drugs prohibited by law by users, and fewer cases involve proving the intent of production, sale, distribution, etc.

In recent times, drug prices have experienced significant variations. Wholesale prices have remained stable for cannabis, cocaine, amphetamine, and ecstasy pills, while the price of heroin has decreased by approximately 20% due to the emergence of alternatives, new types of drugs that are three or even four times cheaper than heroin. In 2020, nearly 7 tons of new psychoactive substances were seized in the European Union. These substances are sold for their psychoactive properties but are not controlled under international drug conventions. The European market for new psychoactive substances has been affected by recent restrictions on their production and export imposed by China, one of the main source countries [14].

The national anti-drug strategy for the years 2020-2027 of the Republic of Moldova aims to reduce drug demand (primary prevention of drug use, treatment, rehabilitation, and social reintegration of drug users), reduce drug supply (exercise control over the legal circulation of drugs and combat illicit drug trafficking and distribution, reduce drug accessibility, especially for minors, through the appropriate use of legal and institutional tools, counteract drug transit and introduction into the territory of the Republic of Moldova through smuggling, including through the services provided by the State Enterprise "Moldovan Post", reduce the number of crimes committed by focusing on identifying and dismantling criminal groups involved in illicit drug trafficking, etc.)[6].

[1] The circulation of drugs, precursors, ethnobotanicals, and their analogues refers to any operations such as experimenting, developing, producing (manufacturing), preparing, cultivating, extracting, processing, transforming, possessing, storing, keeping, delivering, releasing, distributing, dispatching, transporting, procuring (buying), trading, destroying, importing, exporting, using, promoting them, and other related activities.

Responsible for achieving the most important objectives are the law enforcement agencies within the Ministry of Internal Affairs, the Customs Service, the Information and Security Service, etc. Within the drug policy, the Ministry of Internal Affairs is predominantly responsible for implementing the Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, adopted in Vienna on December 20, 1988 [3], especially regarding taking measures to combat the supply of illicit drugs and the cultivation of plants for drug production. In general, the Ministry of Internal Affairs is responsible for maintaining public order and security, combating drug-related crimes, and providing professional training to its personnel. It plays an important role in controlling and enforcing the law regarding the legal circulation of drugs, narcotic substances, psychotropic substances, and precursors, and ensures countering, detecting, and investigating, within its competencies, the illegal trafficking across the state border of drugs, narcotic substances, psychotropic substances, and precursors, and in the absence of customs authorities, carries out their seizure.

In cases of drug trafficking-related crimes, the modus operandi by which the acts were committed is one of the key elements in the forensic characterization of these offenses. It is also a necessary element of the objective side of the offense provided by criminal law. Therefore, we can conclude that the methods of committing criminal acts in this category of cases represent a system of techniques used by subjects to achieve their criminal goals: the method of committing the act reflects its material manifestation.

The methods of committing drug trafficking-related crimes are reflected in objective reality in the form of a specific system of traces. These traces provide an opportunity to perceive the essence of the event (preparation for the commission of the offense, the immediate event of committing the crime, the subsequent behavior of the offender), as well as the specific circumstances of the offense related to the person or the circle of persons who may commit the offense. Establishing the method of committing the offense allows for determining the most optimal methodology for discovering and investigating the crime.

Most methods of committing drug-related crimes ultimately aim to achieve maximum profit and subsequent legalization of the proceeds from criminal activities. The money obtained from drug sales re-enters illegal circulation to procure new batches of drugs and resell them. Furthermore, the financial resources obtained through criminal means or criminal activities are often used not only to commit new drug-related crimes but also to fund various legal activities carried out as a cover. Practice shows that these funds are used to acquire commercial enterprises (markets, stores, online store networks) or small businesses (laundromats, auto repair shops, agricultural or recreational land, etc.). Additionally, drug money is often used to purchase weapons, finance political leaders, corrupt officials of various ranks, support (illegal) gambling units, bars, and nightclubs. Drug traffickers often invest money in movable and immovable properties. Thus, there is a "money laundering" of the proceeds from drug trafficking.

Among drug-related crimes, the most stable and significant proportion is represented by "Illegal circulation of drugs, herbal substances, or their analogues without the purpose of alienation," and usually, the objective aspect is manifested by the illegal procurement[2] and storage

[2] According to the Explanatory Decision of the Plenum of the Supreme Court of Justice of the Republic of Moldova, 11) the procurement of drugs, herbal substances, or their analogues is considered obtaining them by a person through an illicit transaction (purchase, receipt as a loan, as a gift, or in exchange for other goods and objects, as well as as a means of reciprocal settlement for work done, a service provided, or as repayment of a debt, etc.), as a result of which they become the possessor of these substances; 12) the possession of drugs, herbal substances, or their analogues means any deliberate action related to the illicit acquisition of these substances by the guilty party (keeping them on oneself, in rooms, in specially adapted places, in hiding places, in means of transport intended for temporary storage, etc.). At the same time, it does not matter how long the person illegally keeps these substances, as the offense has a continuous character. The possession of the respective substances is a natural continuation of their procurement or preparation (sometimes also of their transportation, dispatch, etc.); 13) the transportation of drugs, herbal substances, or their

without the intention of selling [7]. The state and dynamics of this crime primarily characterize the criminality associated with the illegal circulation of drugs, from a statistical perspective of the number of offenses committed.

Usually, such crimes are committed following a similar scenario. Drug users through the "Internet" search for drug dealers and distributors, then contact them through instant messaging programs (Viber, WhatsApp, Messenger, Telegram, Skype, etc.) and receive details regarding the payment method for the drugs they have chosen. After paying for the goods, the consumer receives a message in the messaging application indicating the address and detailed location of the hiding place, with detailed instructions for finding the narcotics or psychotropic substance purchased. Often, the message also contains a photograph of the location (marking). The user then keeps the drug with them for a period of time or hides it to transfer or transport it in a certain way, if necessary, to the place where it should be consumed.

In most cases, the consumer is apprehended and, most often, convicted for "Illegal Circulation of Drugs, Herbal Substances, or their Analogues without the Purpose of Alienation" (paragraph 2 of Article 217 of the Criminal Code of the Republic of Moldova). Traders, on the other hand, are often referred to in legal proceedings as "unidentified persons," and therefore, usually, it is not possible to establish their identity.

Procuring narcotics and/or herbal substances for personal consumption is always associated with their illegal possession. Possession of drugs/herbal substances is defined by the legislator as any intentional actions related to the actual possession of them by the perpetrator (on their person, in transit, inside the home, in improvised hiding places in any public or private places, and in other locations). The methods of storage vary depending on the operations the subject intends to carry out with the drugs/herbal substances they possess.

Regular users typically keep drugs on their person - in clothing pockets, bags, etc. Small-scale dealers (direct distributors to consumers), usually divide the drugs they have purchased into two parts, keeping a small portion with them and the main part in an apartment or in places where the drug can be quickly accessed (mailboxes at the entrances of residential buildings, easily accessible hiding spots).

Major drug dealers do not keep drugs/herbal substances, etc. on their person, but they can often be found during searches in hiding places set up in apartments, houses, basements, and garages. Criminals show great ingenuity when setting up special hiding spots. In apartments, drugs can be stored in specially designed hiding places, which are equipped in window sills, floors, walls, and pieces of furniture. Drugs are hidden in curtain rods, in the folds of curtains, in niches and toilet flush tanks, in electrical meters, in containers with cereals, sugar, or liquids, in books. Cribs and toys, as well as children's clothing, are often used to conceal drugs. In larger houses, drugs are hidden in attics and basements, buried in adjacent areas, in trash, as in this case it is quite difficult to prove that the drugs found belong to the people living in these houses. Additionally, drugs are often handed over for storage to relatives or acquaintances of the traffickers. This must be taken into account in the process of investigating crimes related to the illegal trafficking of drugs. It should be noted that the storage method largely depends on the condition of the drug/herbal substances, the convenience of transportation, and the ability, in some cases, to mask the specific odor.

If the drug is a solution (acetylated opium, poppy straw infusion, ephedrine), then it is usually stored in a glass container with a tight-fitting lid or stopper. The drug solution can also be kept in syringes (some distributors of injectable drugs distribute drugs already prepared for injection

analogues involves moving them from one place to another, including within the limits of the same locality, using any type of transport or object used as a means of transport, regardless of the location where the substances are stored, within the customs territory of the Republic of Moldova.

to assure the consumer that they will not be detained for storing and transporting the drug, as it is "consumed" immediately).

Drugs in powder form (heroin, amphetamines) are typically stored in paper bags of various types (such as tracing paper, notebook or magazine sheets), in small plastic bags. Their size is determined by the criminal, depending on the volume of drugs packaged in them and the transportation specifics. Drugs in tablet form (methadone, promedol, phencyclidine) are stored both in packaging (glass, plastic containers, plastic bags) and without them. Drugs in mass or pasty form (hashish oil, raw opium) are stored in polyethylene bags or small glass containers, sometimes in matchboxes.

Drugs in vegetable form (marijuana, poppy straw), depending on the quantity, can be stored in polyethylene or cloth bags, shopping bags, backpacks. The manufacturing of drugs is understood as intentional, illegal actions aimed at obtaining from narcotic plants, substances containing drugs, chemicals, and other substances one or more narcotics ready for use and consumption, among those included in the List [5] of narcotic, psychotropic substances, and plants containing such substances. The production of narcotics, meaning actions aimed at their mass production, is also classified as an illicit act. Most often, for these purposes, natural material in the form of raw materials from wild hemp, poppy intended for opium extraction, is used. Synthetic drugs are also manufactured. Furthermore, by "production," it is understood not only the final result, when the drug is obtained and ready for use, but the production process itself [7].

The method of manufacturing drugs varies depending on the raw materials used to produce them, as well as what kind of drugs the offender is trying to obtain. According to the Decision of the Plenum of the Supreme Court of Justice of the Republic of Moldova regarding the judicial practice of applying criminal legislation regulating the circulation of drugs, ethnobotanicals, or their analogues and precursors, processing drugs, ethnobotanicals, or their analogues means changing their initial consumption qualities in order to enhance or modify in another way the specific effects they produce (for example, refining (separating impurities) the mixture containing one or more drugs, ethnobotanicals, or their analogues, increasing the concentration of the drug or ethnobotanical in the preparation, mixing with other pharmacologically active substances to enhance the narcotic effect on the body, etc.) [7].

Based on this definition, three types of processing can be distinguished in practice: refining (cleaning of impurities), increasing the concentration of the drug, obtaining a substance based on a drug that is not narcotic. This latter method of processing does not constitute an offense under Article 217 of the Criminal Code.

Practice shows that a small number of cases are initiated for the manufacture and processing of narcotics. This can be explained by the fact that currently the drug distribution network has been improved so much that it is not difficult at all to procure them. The places and methods of distribution are usually well known to drug addicts. And considering that the punishment for manufacturing and processing is greater than for possession and transportation without the purpose of trafficking, it is quite evident that for a drug addict it is easier to acquire a drug than to prepare it.

Transporting drugs, ethnobotanicals, or their analogues involves moving them from one place to another, including within the limits of the same locality, using any type of transportation or object used as a means of transport, regardless of the location where the substances are stored, within the customs territory of the Republic of Moldova. The Plenum clarifies that any mode of transport includes land, underground, water, or air, while the method of transport and the location of storage of illegally moved funds do not matter [7]. The methods of transporting and concealing drugs during transportation are quite diverse. Drug transportation can also be in the form of parcels (letters), luggage, through couriers, or in other ways (for example, using animals: dogs or birds). It is not mandatory for the sender to accompany the parcel (luggage). Typically, during transportation, drugs are

disguised among other items. Illicit drug trafficking should be understood as any means of paid or free transfer of drugs to other persons (sale, donation, exchange, payment of a debt, loan, etc.), as well as other distribution methods, for example, through injection.

To date, the most common method of drug distribution (in the vast majority of criminal cases studied) is non-contact selling, using concealments in which the substances are placed[3] [11].

Initially, major drug traffickers reach agreements with distributors ("couriers", "carriers"[4]). These distributors, in turn, leave a sum of money as collateral through electronic payment methods and provide personal data. Subsequently, drug dealers systematically begin to transfer drugs to the "couriers", also using a contactless method - hiding spots. Initially, drugs are administered in small quantities, but as the "courier" gains trust and builds a reputation, larger quantities are transferred to them. The couriers of purchased narcotics package the drugs in smaller quantities, usually indicated by the drug dealer, and then find places and create hiding spots with drugs in those areas of the city indicated by the drug dealer or decide themselves if allowed by the dealer. As the "hiding spots" are paid for and found by the end user, the "courier" (sometimes also called a mortgagee) receives their reward in money, likewise through electronic payment systems. It should also be noted that the "participants" do not communicate directly with the organizer; they communicate through curators ("operators")[4] [12].

Each objective method of committing a crime causes specific changes only to them, in the

[3] The defendant C. Marius, being questioned under oath, fully admitted his guilt in committing the offense attributed to him, stating that between November 2022 and December 2022, he sold drugs - Amphetamine and Mephedrone - through the Telegram application. He obtained the drugs in the following manner: he would send a message through the Telegram application to the store that dealt with drug sales, after which he would receive the coordinates for picking up the package and the weight of the package in the same way. After receiving the package, he would divide it into smaller packages, place them in hiding spots of his choice, and send the coordinates to the individuals in the store. He regrets his actions. At the time of his apprehension, he voluntarily handed over several drug packages prepared to be placed in hiding spots, despite having the real possibility of disposing of them and not handing them over to the police collaborators. As a result of his activities, he received a profit transferred from the store's account in cryptocurrency. He was paid several times, $200 each time. The necessity of his activities stemmed from the goal of making money. He is not a drug user, just an occasional experimenter.

[4] The defendant B.A. has been accused that during the period of the year 2021, until the moment of detention on 30.09.2021, together and by prior agreement with other unidentified individuals by the criminal prosecution body, aiming to profit from the illegal circulation of drugs, acting through participation in the form of an organized criminal group, with the preventive distribution of roles to each, as the perpetrator undertook actions for the procurement, storage, transportation, distribution, or other illegal operations with drugs, as well as the alienation of drugs. Thus, during the mentioned period, to achieve the common criminal purpose, according to the prior agreement and according to the role assigned to him in advance, B.A., coordinating his actions through communication applications on the Internet network with other co-participants in the commission of the crime, acted as a courier within an online drug distribution store created in the Telegram communication application. In the criminal group to which B.A. belonged, and was assigned the role of courier, distributing repackaged drugs in zip-lock packages in the municipality of Chisinau to individuals who purchased them, there were also other unidentified individuals who managed and ensured the operation of the online drug store, individuals who acted as operators of the online store, responsible for receiving orders for the procurement of drugs, keeping records of the quantities of drugs placed to be taken by recipients, and transmitting the respective information among other group members, as well as individuals responsible for receiving larger quantities of drugs, repackaging them in smaller quantities, and passing them on to couriers for further distribution. The criminal activity of the organized criminal group to which B.A. belonged was carried out through the online drug sales store and had a continuous nature, with a stable and well-defined distribution of roles for each member, and communication between group members was exclusively done through internet communication applications. B.A. used his mobile phone of model *****, with IMEI numbers: *****, as well as the mobile phone of model *****, with IMEI numbers: ***** and *****, from which he sent and received messages, including through the account "*****" (registered on the phone number +373 *****), created in the Telegram application installed on it. In this regard, at the direction of individuals managing the online drug sales store, B.A. received information about the exact location and coordinates from where he picked up packages with multiple smaller packages of marijuana drugs, which he transported and stored at a temporary residence he rented for this purpose, located in Chisinau, *****. Furthermore, through the mentioned online store, unidentified individuals by the criminal prosecution body, acting as operators of the online store, received orders from drug consumers, who indicated in messages the type of drugs requested, the quantity, and were informed about the price at which

form of traces, which are signs of the application of one or another method. Underestimating traces negatively affects the overall quality of the investigation. Correct forensic evaluation of traces makes it possible to create a real opportunity for the rapid perception from the initial information of the traces for the discovery of the crime. The study of the practice of investigating crimes related to the illegal circulation of drugs has shown that the most common are the following groups of traces, specific to crimes of this type: (1) traces of cultivating plants (raw materials) and manufacturing drugs, (2) traces of transporting, storing, and selling drugs, (3) traces of drug consumption.

The first group includes residues of plant materials in the places of cultivation and storage (stems, leaves, inflorescences, pollen, etc.), any technological materials and waste (used and worn parts of plants, the plants themselves, solvents used), secondary products of the drug manufacturing and purification stage (for example, dark brown substance layers on vessel walls formed during the manufacturing of acetylated opium), finished narcotics, components of narcotic synthesis (anhydride, acetone, household solvents 645, 646, 647, 648, 649, 650, R-5, vinegar, potassium permanganate), recipes (from scientific and non-scientific sources), specialized literature, sketch notes describing drug manufacturing methods (notebooks, sheets, and their remnants), unpleasant odors from the clothes and body of the drug producer, formed as a result of their manufacturing processes (especially true in cases of synthetic drug manufacturing), fingerprints: on tools used in committing crimes (vessels, scales), on drug consumption means (syringes), on packaging adapted for drug storage and sale (glass containers, paper or plastic bags), various micro-traces on these items. Traces of the second group include paper and other packaging (parts and pieces of paper, polyethylene, cigarette and regular foil), special containers, hiding spots in vehicles, in the clothes of carriers and distributors, as well as special "containers" placed in the courier's body (in body orifices, in the stomach, etc.), traces of the actual narcotics on the suspects' hands, in seams, on folds, and in clothing pockets, traces of drug-associated odors, money and other valuables (audio and video equipment, expensive gadgets, precious metal products, weapons, etc.) received for drug manufacturing, storage, or sale, addresses and phone numbers of couriers, traffickers, etc., shortage of drugs containing narcotics during inventory in pharmacies, hospitals, etc.

The above traces can be found in the living and utility rooms of the suspects, in cabins, recreational areas, garages, vehicles, etc. Drug traces can also be found on the clothing in which suspects produce or sell drugs. Traces of the third group include traces of intravenous and subcutaneous injections (in the elbow region, on the hands, in the groin area, in the armpits, etc.). Possible injection sites are clearly visible due to their frequency and the marks from the tourniquet that appear on the arms. Similarly, changes in the external appearance and life of the drug consumer become visible (changes in daily routine, associativity in their behavior, increase or decrease in appetite, isolation, etc.).

The difficulty in detecting and identifying crimes related to the illegal trafficking of drugs and synthetic drugs lies in the fact that these crimes do not have a primary source of information, such as a victim. An exception is the illegal acts of theft or extortion of drugs or synthetic drugs.

In other cases of committing crimes related to the illegal trafficking of drugs and synthetic drugs, the main grounds for initiating criminal proceedings are self-reports by law enforcement

they could purchase them and the payment method. Regarding the quantity of drugs needed, especially the number of doses requested, the individuals acting as operators of the online store informed B.A. In turn, after receiving the larger packages, B.A. hid the smaller packages of drugs, which were divided into doses according to the orders received from consumers, in various locations in the municipality of Chisinau and passed them on to individuals acting as. As a result of the activities carried out within the online drug sales store, from unidentified individuals who managed the activities of the respective store, during the period from 13.09.2021 to 29.09.2021, B.A. received transfers in the virtual currency *****, equivalent to the amount of 1,590 US dollars, which is 28,063.5 Moldovan Lei, according to the average exchange rate established by the National Bank of Moldova, into the electronic wallets indicated to the user of the account "*****" through the account "*****" (registered on the phone number +373 *****), created in the Telegram application on his phone.

agencies regarding evidence indicating the commission of such acts, self-denunciations, and reports by citizens (often anonymous).

The key to detecting and identifying crimes in this category lies in the results of special investigative activities and the patrol services' activities (maintaining public order [10]).

Investigation officers, analyzing the situation obtained as a result of special investigation activities [1, art.132[2]], identify the most frequent hiding places, possible locations for setting up other hiding places, determine individuals possibly involved in drug trafficking, storage locations, and drug manufacturing laboratories. However, it should be noted that currently, it is very difficult to obtain such information due to the modernized structure of criminal networks, where all participants in illegal drug and synthetic drug trafficking communicate with each other through instant messaging software that, in turn, have data encryption tools, and money flows through online payment systems and cryptocurrencies. This significantly complicates the identification of other participants in the criminal network, and upon the apprehension of one, usually a consumer or "small courier," it becomes difficult to obtain further information because the detainee himself does not know the other participants and has never seen them. However, law enforcement agencies are adapting to the modern conditions implemented and used by traffickers. In the initial stage of investigating cases related to the illegal trafficking of drugs and synthetic drugs, the following typical situations are usually highlighted: 1) the apprehension of a person during or immediately after committing a drug-related offense where drugs are seized from them; 2) the person is apprehended with reasonable suspicion of involvement in drug or synthetic drug trafficking offenses, but these substances were not found on them.

For the first situation, the most typical criminal investigation actions and special investigation activities are as follows:

- apprehension and body search of the suspect;
- examination of the location where the apprehension took place, the area where the drug-containing crop is cultivated, the spaces where drugs or raw materials for their production were stored;
- examination of substances, documents, objects, and records;
- forensic examination of the suspect to determine drug intoxication or the body's condition;
- appointment and conduct of chemical expertise;
- appointment and conduct of forensic expertise;
- searches at the suspect's residence, workplace, in their personal vehicle, examination of the contents of the mobile phone (there may be multiple);
- interrogation of the suspect;
- interrogation of witnesses;
- conducting special investigation activities aimed at establishing all criminal connections, storage locations, distribution channels, etc.

The second situation is characterized by:

- medical examination of the suspect to identify drug intoxication or the body's condition;
- search at the suspect's residence, workplace, means of transportation;
- interrogation of the suspect;
- interrogation of witnesses;
- examination of the suspect's objects, documents, clothing;
- ordering of forensic, chemical expertise, etc.;
- conducting special investigation activities aimed at establishing drug trafficking facts, storage locations, accomplices to the crime, etc.

Depending on the specific situation in the initial stage of the investigation, the following specific versions (hypotheses) can be proposed for verification:

- the discovered drugs were purchased by the suspect from an unknown drug dealer;

- the suspect is a regular customer of the drug dealer;
- the suspect is a drug user and manufactures drugs from raw materials obtained, extracted, cultivated by him;
- the suspect detained on reasonable suspicion of committing a crime related to illegal drug trafficking is a member of a criminal group;
- the drugs, designer drugs found on the suspect or used by him are stolen from a medical institution, pharmacy, or another institution by him or someone else.

Furthermore, versions (hypotheses) can be put forward regarding the methods of drug manufacturing, the location of individuals involved in the crime, drug-containing crops, drug storage locations, etc.

When planning criminal prosecution, special attention must be paid to the interaction of various law enforcement agencies. As indicated by law enforcement practice, the discovery and investigation of many such crimes require a complex of criminal prosecution actions combined with various special investigative measures, as these crimes are deeply latent and are not committed through a single action or episode but have a continuous nature until the offenders are apprehended and the illegal acts are stopped.

The illicit trafficking of drugs and designer drugs, as well as the spread of addiction, already have a negative impact on the socio-psychological situation in society, negatively affecting the economy, politics, law, rule of law, and the health of many people. The rate of increase in the number of drug users and psychotropic substance consumers is rising due to modern covert mechanisms for drug distribution. Drug-dependent individuals are becoming increasingly younger. More and more minors are gaining "experience" in drug and designer drug use. In the last decade, the number of latent drug-related crimes has increased many times over. The number of illnesses and deaths due to drug use is also increasing, even among children.

The main causes of the spread of drug addiction would be: the desire of many young people to experience the effects of drugs on themselves, the possibility of procurement through secure clandestine methods, the emergence of new drugs at low prices, often underfunding the activities of law enforcement agencies and special counter-drug trafficking services.

Summarizing the above, we find that drug addiction is not a personal issue for each individual in society. Today, most states create and promote state policies to counter drug addiction in society. Existing regulations contain a large amount of systematized provisions that define tasks, principles, priorities, implementation objectives; however, successful strategy is seen in the interaction of all public bodies and organizations opposing the spread of drug addiction, in improving the prevention system, in strict compliance with procedures for the legal circulation of narcotics, in compliance with legal, administrative, control, and technological requirements regulating the production, storage, transportation, and medical use of drugs containing narcotic substances.

However, along with the social policy pursued by states, it is necessary to improve the fight against illegal drug trafficking by law enforcement agencies. Every day, more and more new ways of committing drug trafficking crimes emerge, new, stronger, and more dangerous drugs appear, and the methods of manufacturing them are perfected. Of particular concern are the so-called "synthetic" drugs of non-plant origin, obtained through chemical reactions (salts, bath salts, "salt" - a term used in the Republic of Moldova). These have a particularly harmful effect on the human body, often causing psychological dependence from the first use [15] and are rapidly spread not only at the city, county, or country level but at a continental and global level[5][9].

[5] On March 15, 2023, law enforcement authorities dismantled a drug trafficking network and detained a man and his concubine, from whom they seized approximately 1.9 kg of a prohibited substance. According to estimates, on the black market, this quantity of PVP-type drugs, white or pink crystals, known as „salt," would have been sold by the suspects for around 1.2 million lei. They had been monitored by law enforcement for three months, and on March 3, 2023, they were detained while they were placing the drugs in hiding spots, from where they were supposed to be picked up by customers.

Given that interceptions of electronic communications often do not yield results due to encryption and advanced technologies applied to the creation of messaging software used on the internet, each state is expected to seek measures and ways to penetrate drug trafficking schemes in order to dismantle them and ensure the enforcement of criminal law.

Online sales through stores set up in electronic communication applications, online transfers, and converting money into cryptocurrency, using bank cards with open IBANs in the names of other individuals (elderly or needy who do not objectively perceive the situation) or in banks abroad, using non-bank payment terminals (QIWI, BPAY, OPLATA, etc.), constitute serious obstacles in countering the illegal circulation of drugs and ethnobotanicals. In this regard, there is a need for more in-depth collaboration between law enforcement agencies and financial-banking institutions. The latter could provide law enforcement agencies with information about multiple transfers of small amounts to the same accounts or electronic wallets operated at certain time intervals. This information would allow investigative officers to verify the information and more easily uncover the criminals behind drug sales networks and online stores, both in large and small quantities.

Typically, in most countries, the competence to detect and combat crimes related to the illegal circulation of drugs lies with the police, the criminal investigation bodies of the police. The general objective of these law enforcement agencies is to significantly reduce the supply of illegal drugs on the market by identifying trafficking networks and dismantling them (reducing the demand for drugs would be more within the competence of health protection authorities, the educational system, etc.).

In the traditional approach to measuring the effectiveness of combating drug-related crime, the main emphasis is placed on quantitative data regarding recorded offenses and individuals detained or convicted. In this sense, we consider that the effectiveness of combating crimes in the field of illegal drug and ethnobotanical circulation should be evaluated not only by the number of cases and individuals detained or convicted but also by the qualitative indicators of this activity: detecting drug warehouses, apprehending operators of virtual stores, identifying sources and channels of transportation in large quantities. These measures would reduce the drug supply on the market and lead to a decrease in drug addiction as a social phenomenon.

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THE POLITICAL AND LEGAL ASPECTS OF THE PEACEKEEPING FORMAT IN THE TRANSNISTRIAN REGION

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Summary

The current international and regional situation has reactivated the politics of Chisinau and Tiraspol, prompting reactions to the challenges and threats in the region, especially due to the military developments in Ukraine.

In this context, the Transnistrian issue has gained significant importance due to several factors. One of these factors is the peacekeeping format and the presence of the Task Force of Russian Troops in the Transnistrian region. The military conflict in Ukraine plays a crucial role in this context, generating new security risks in the Transnistrian and Black Sea regions, areas of interest for several regional and international actors. Russia, due to its ideological position and its geopolitical and normative status as the successor state to the Soviet Union, is directly involved in the political developments in the region.

Therefore, the issue of the peacekeeping format and the Russian military presence in the Transnistrian region (OGRT) remains central to resolving the Transnistrian conflict. Tiraspol views the current peacekeeping format as a security guarantor, while Chisinau insists on transforming the peacekeeping operation into a civilian international mission to align with the geopolitical realities of the current international system, and calls for the withdrawal of the Russian troops from the Republic of Moldova.

Meanwhile, the core policies of both parties focus on preventing the conflict's escalation and maintaining stability through political and diplomatic efforts, rather than military force. This combination of variables underscores the relevance and timeliness of studying the peacekeeping format in the Transnistrian region.

Keywords: Transnistria, conflict, Republic of Moldova, the peacekeeping mission, Russia, OGRT.

Introduction. The active changes occurring at the international level and the evolution of the multipolar system have led to the modification of the nature of international conflicts, resulting in the formation of a new global security policy that requires timely action in response to new challenges. The situation at both the international and regional levels has reactivated the politics of Chisinau and Tiraspol, which have responded to the challenges and threats in the region, especially due to the military developments in Ukraine. In this context, the Transnistrian issue has gained significant importance, based on several factors. One of these factors is the peacekeeping format and the Operational Group of Russian Forces in the Transnistrian Region (OGRT). The military conflict in Ukraine plays an important role in this context, as it generates new security risks in the Transnistrian region and in the Black Sea region, which is an area of interest for several regional and international actors. Therefore, the issue of the peacekeeping format and the Russian military presence in the Transnistrian region (OGRT) remains central to the settlement of the Transnistrian conflict. Tiraspol perceives the current peacekeeping format as a guarantor of security, while Chisinau insists on transforming the peacekeeping operation into a civilian international mission that aligns with the geopolitical realities of the current international system and requests the withdrawal of the Russian troop contingent from the territory of the Republic of Moldova. At the same time, the core policies of both parties aim to prevent the escalation of the conflict and maintain stability through political and diplomatic efforts, not military force. The

combination of these factors allows us to assert with certainty that the study of the peacekeeping format in the Transnistrian region is becoming a highly relevant and timely topic.

The evolution of the settlement of the Transnistrian conflict. The initial effort to regulate the Transnistrian conflict on a legal basis was undertaken in March 1992, when the quadripartite mechanism of political consultations between Russia, Ukraine, the Republic of Moldova, and Romania was created, with the function of mediating the confrontation between Chisinau and Tiraspol. However, against the backdrop of the creation of this mediation mechanism, there was an escalation of armed confrontations involving the units of the 14th Army [5, pp. 22-23]. Thus, the quadripartite mechanism of political consultations between Russia, Ukraine, the Republic of Moldova, and Romania could not fully realize its efforts to negotiate the conflict. Nevertheless, the foreign ministers of Russia, Ukraine, the Republic of Moldova, and Romania reviewed the developments in the conflict zone and examined the recommendations formulated by the group of experts from the four countries for settling the Transnistrian conflict exclusively through political means, respecting human rights, national minorities, preventing the escalation of the conflict, and avoiding the involvement of citizens from other states, particularly the involvement of Cossacks [13, pp.39-40].

The initial efforts to regulate the Transnistrian conflict also include the Kiev Declaration of March 20, 1992, by the heads of state members of the CIS, which encompasses the basic elements for resolving the conflict politically. The declaration stated the willingness of the Republic of Moldova and the Russian Federation to initiate negotiations to establish the legal status of the 14th Army and to prevent any foreign military intervention in the conflict (Article II, point 4 of the Declaration). To end the conflict, the quadripartite mechanism committed to urgently taking measures to cease fire, starting from April 7, 1992, at 15:00. Russia, Ukraine, and Romania committed themselves to refrain from any actions that could be considered direct interference in the conflict. To enhance mutual trust in the conflict zone, the foreign ministers of the quadripartite mechanism decided to create a Joint Commission, with representatives from the four countries, to monitor compliance with the decisions regarding the ceasefire and to establish a mechanism for mutual information exchange between the four countries regarding the situation in the conflict zone [9, pp.315-317].

The quadripartite mechanism thus became the first legal instrument of the governments of Russia, Ukraine, the Republic of Moldova, and Romania, CSCE member states, to politically resolve the conflict in the Transnistrian region. On June 18, 1992, the Parliament of the Republic of Moldova approved the decision of the Joint Commission for the peaceful settlement of the armed conflict in the eastern districts of the Republic of Moldova. However, the armed conflict in the Transnistrian region did not cease, and at the Istanbul meeting on June 25, 1992, of the presidents of the quadripartite mechanism, an appeal was addressed to the leadership bodies of the CSCE to contribute through good offices to the settlement of the Transnistrian conflict. However, two days later, in the repertoire of interference in the internal affairs of post-Soviet states, the Russian Ministry of Foreign Affairs issued a verbal note on the evolution of events in Transnistria, stating that the Republic of Moldova does not want to resolve the Transnistrian conflict through political methods with the participation of the interested parties in the conflict [5, pp. 26-29]. The implementation of the agreements agreed within the quadripartite political consultation mechanism faced great difficulties from the leaders in Tiraspol. Thus, on July 6, 1992, the presidents of the Russian Federation and the Republic of Moldova agreed on a joint Agreement on the cessation of the armed conflict in the Transnistrian region, signed between the plenipotentiary representative of the president of Russia, Colonel-General V. M. Semyonov, the first deputy minister of defense of the Republic of Moldova, General P. Creangă, the head of the Transnistrian defense, General Ş. Chiţac, in the presence of the commander of the 14th Army, Major General A. I. Lebed. The agreement provided for withdrawal from firing positions, starting at 00:00 on July 8, 1992.

In this context, at the meeting of the Supreme Security Council of the Republic of Moldova on July 15, 1992, the draft Convention between the Republic of Moldova and the Russian Federation on the basic principles of the peaceful settlement of the armed conflict in the Transnistrian region was examined and approved. It should be noted that the understandings reached in Istanbul between the presidents of the member states of the quadripartite mechanism were the basis of the draft Convention. The draft provided for the creation of a Single Coordinating Group, consisting of representatives of the Ministry of Defense of the Republic of Moldova, the Ministry of Defense of the Russian Federation, and representatives of the paramilitary formations from the left bank of the Dniester. Its function was to strengthen the ceasefire regime and ensure the withdrawal of military equipment and weapons from firing positions. It was also envisaged that members of the quadripartite Joint Commission would participate as observers in the Single Coordinating Group. Importantly, this Convention mentions for the first time the creation of joint peacekeeping forces in the region, which would remain in the disengagement zone of the conflict parties until the introduction of international peacekeeping forces. The Convention provided that the Ministry of Defense of the Russian Federation ensure the complete neutrality of the units and subunits of the 14th Army to demilitarize the armed conflict zone. Negotiations on the status of the 14th Army [9, pp. 408-415] were proposed, although the 14th Army's posts were already positioned between the conflict parties [4, p.11].

A decisive step toward ending the armed conflict was the signing of the Agreement between the Republic of Moldova and the Russian Federation on the principles of peaceful settlement of the armed conflict in the Dniester area of the Republic of Moldova, concluded in Moscow on July 21, 1992 [1, p.560].

This Agreement sets the legal basis for the peaceful resolution of the Transnistrian conflict in accordance with the principles of the UN Charter and CSCE, and creates the necessary tools for applying the principles of peaceful settlement. To ensure the security regime, a Unified Control Commission (CUC) was established, consisting of representatives from the three parties engaged in resolving the Transnistrian conflict (Article 2, point 1 of the Agreement) [3, p. 9]. The city of Bender/Tighina became the residence of the CUC, and given the complexity of the geographical situation, the city was declared an area with an enhanced security regime. The military contingents of the parties involved in implementing the Agreement ensure security in the area. Regarding the 14th Army units stationed in the Transnistrian region, Article 4 mentions that they will strictly observe neutrality. The issue of the army's status, the procedure, and the stages of its withdrawal were to be resolved through bilateral negotiations between the Russian Federation and the Republic of Moldova. Within seven days, the conflict parties committed to creating the Security Zone [3, p.10]. An important reality regarding the Agreement signed between the Russian Federation and the Republic of Moldova in the presence of the Transnistrian delegation is that the Moldovan leadership signed the Kremlin-drafted version of the Agreement in Moscow. Regarding the 14th Army, the wording in Article 4 of the Agreement distances from troop withdrawal, and Chisinau's position is unclear. While Larry Pressler (Republican senator from the US Congress) persuaded the US legislature to postpone credits to Russia until it withdrew its armed forces from the Republic of Moldova and while the US granted the Republic of Moldova most-favored-nation status, the Chisinau leadership nevertheless signed the Agreement [5, pp. 28-30].

In conclusion, we can deduce that this Agreement, in addition to ending the armed conflict on the Dniester, also resolved some regional geopolitical issues for the Russian Federation. An analysis of the geopolitical interests in the region and the purpose of the 14th Army was made by the Ministry of Defense of the Republic of Moldova in a reference issued on May 28, 1992, two months before the signing of the Agreement [1, pp.624-628].

In the context of implementing the principles and provisions of the Agreement, as stipulated in Article 1, exactly seven days later, on July 28, 1992, in the city of Bender/Tighina, a meeting of

the Unified Control Commission was held to establish the coordinates of the Security Zone and deploy the peacekeeping military contingents. The Security Zone is located on both banks of the Dniester River, covering an area of 225 kilometers in length and 12-20 kilometers in width. It is organized into three sectors (North, Center, South) and an area with an enhanced security regime - the city of Bender/Tighina [6, p. 238]. The North and Center sectors are the largest by area, 85 and 80 kilometers, respectively. This fundamental principle has been strictly respected to this day. Joint peacekeeping forces, consisting of military contingents from Russia, the Republic of Moldova, and Tiraspol, were deployed in the Security Zone and the city of Bender/Tighina. The control over the implementation of measures and ensuring the security regime was assigned to the Unified Control Commission [6, p.239].

Regarding the OGRT and the heavy weaponry left by the 14th Army, the restrictions provided by the Treaty on Conventional Armed Forces in Europe (CFE) apply. The process of reducing the armed forces and armaments of the 14th Army (from 1995 OGRT) was initiated in December 1992 at the meeting of the CSCE foreign ministers in Stockholm [20, pp. 7-8]. However, in 2007 Russia declared a moratorium on its CFE commitments [25], and in March 2015 officially announced its withdrawal from the Treaty [26]. According to Article 2 of the 1992 Agreement, the status of the 14th Army (reorganized into the OGRT) and the terms of its phased withdrawal were to be resolved through negotiations between the Russian Federation and the Republic of Moldova. Thus, on October 21, 1994, an Agreement was signed in Moscow between Russia and the Republic of Moldova regarding the legal status, modality, and terms of withdrawal of the Russian military formations temporarily stationed on the territory of the Republic of Moldova. The Agreement of October 21, 1994, in the absence of other documents, is the only legal act concluded between the Russian Federation and the Republic of Moldova, attesting to the presence of Russian military formations on the territory of the Republic of Moldova.

In 1999, the OSCE Summit took place in Istanbul, resulting in the adoption of a Declaration specifying certain references to the peacekeeping format in the Transnistrian conflict and the withdrawal of Russian troops and ammunition from the Transnistrian region of the Republic of Moldova. Article 18 of the Declaration acknowledged the positive role of the joint peacekeeping forces in ensuring stability in the region. However, Article 19 of the Declaration, referring to the Decisions of the meetings in Budapest and Lisbon, as well as the meeting of foreign ministers in Oslo, stipulates the need for a complete withdrawal of Russian troops from the Republic of Moldova, a process that has not been realized to date [21, pp.52-53].

The geopolitical realities of the peacekeeping mission and Russian troops in the Transnistrian region. We can highlight three military aspects of the Transnistrian conflict: the continuous presence of Russian troops in the Transnistrian region, the status of peacekeeping forces, and the future status of Moldova within the regional security architecture. Since the signing of the 1992 Agreement, there have been several attempts to achieve a complete withdrawal of the 14th Army (reorganized in 1995 as the Operational Group of Russian Forces in Moldova) and its equipment from the Transnistrian region. These efforts included the 1994 Moldova-Russia Agreement, the Conventional Forces in Europe Treaty clause, and Russia's commitment at the 1999 OSCE Summit in Istanbul [7, pp. 39-40].

In the years following 1999, the number of Russian troops and equipment was substantially reduced, and Russia was granted two extensions to complete its withdrawal from the Transnistrian region. However, following the failure of the Kozak Memorandum in 2003, Russia halted the withdrawal of its troops from Transnistria starting in 2004. Currently, Moscow justifies its troop presence as necessary to defend stability and security in the region, as well as to protect the remaining military equipment, approximately 20,000 tons of ammunition. The continued Russian military presence in the Transnistrian region clearly violates Moldova's sovereignty and Russia's international obligations.

Apart from the Operational Group of Russian Forces in Moldova, Russia also has a contingent of military troops as part of the peacekeeping mission established following the 1992 Ceasefire Agreement [3, p. 9]. Calls from Chisinau to internationalize and transform the peacekeeping forces into a civilian mission under OSCE or EU leadership have been strongly rejected by Moscow, which insists on a definitive political resolution of the conflict before any changes to the peacekeeping forces' status are made. For Russia, the military aspects of the conflict extend to Moldova's status as a neutral country, particularly its non-membership in NATO [12, p. 23]. In this regard, the current presence of Russian troops beyond the peacekeeping contingent provides Russia with bargaining power while reducing maneuvering space.

Russia insists that, in resolving the Transnistrian conflict, Moldova's future status must remain neutral and that it must not host any foreign military bases. This addresses a key security concern for Russia while committing Russia to withdraw all remaining troops and equipment from the Transnistrian region. Such an arrangement is likely feasible if the mandate of the peacekeeping forces and Russia's participation therein are extended during the period following the definitive political resolution of the Transnistrian conflict. Although the role of the peacekeepers would evidently need to change, their presence and a Russian component are seen as essential guarantees by the Transnistrian side. The extent to which the peacekeeping mission could be further internationalized post-resolution, its exact mandate, and how long the mission would last should be determined through the negotiation process.

Options for such a peacekeeping arrangement could include forming a civilian component and an extended mandate, for example, under UN leadership, to monitor and verify compliance with the terms set by the mission [15, pp.15-16].

Currently, the situation in the Transnistrian region is complex, marked by significant distrust and rivalry among many key states involved, particularly Russia and Ukraine. In this context and amid the military developments in Ukraine, the Russian peacekeeping forces address several important strategic interests for Russia. They fill the power vacuum left after the dissolution of the USSR and ensure Russia's regional dominance [8, p. 19]. The discrepancy between Russian doctrine and practice regarding peacekeeping responsibilities in post-Soviet conflicts is evident. In practice, Russia has not acknowledged that peace operations have progressively become multidimensional, and thus, humanitarian aid and post-conflict reconstruction have been limited in these unstable areas. Russia's approach to peacebuilding reveals this doctrinal thinking, as peacekeeping formats have been established based on collective consensus among all parties. Russia, as the dominant arbiter in the settlement processes, has remained committed to this format because the settlement process has been shaped by a doctrine emphasizing reciprocal decision-making logic. Russia's refusal to change the peacekeeping format in the Transnistrian region and the peacebuilding framework to allow for greater flexibility in decision-making serves its regional strategic interests. While the status quo indeed serves Russia's strategic purposes, Moscow's refusal to alter the peacekeeping format stems from a concern that such an action would irreversibly change the common understanding of consent to which the parties committed in 1992 [2, pp.114-115].

The main elements of Russian policy towards the Republic of Moldova have remained consistent since 1992, but the strategic tactics have changed with regional and international events and contexts, especially after the military developments in Ukraine. Moscow has provided sufficient material, financial and political support to allow the Transnistrian entity to exist. At the same time, Moscow has consistently refused to recognize Transnistrian independence, adhering to the international consensus that Transnistria is an integral part of the Republic of Moldova, but Moscow insists on the idea that the region should have a special political status. As a mediator in the negotiations for the political settlement of the Transnistrian conflict and through financial, energy and commercial relations, Russia wants to obtain a predominant or exclusive influence over the entire Republic of Moldova, not just over the left bank. Russia's military presence in the

Transnistrian region, including in the form of a peacekeeping contingent, is part of the Kremlin's strategy to achieve predominant political influence over Chisinau. Russian troops in the Transnistrian region are an element of Moscow's advantage in negotiations and in its role as a mediator in the process of political settlement of the Transnistrian conflict. In general, Moscow used this role and its status not only to seek or facilitate a political settlement, although it did so on occasion, but also to maximize its influence throughout the territory of the Republic of Moldova and to include and maintain the Republic of Moldova in its sphere of influence [11,pp. 5-6]. In this situation, what about the principle of non-intervention from international law [24], which completely prohibits the interference of states in the internal and external affairs of other states? Probably, in contemporary international law, the principle of non-intervention has a much broader and realistic content.

As an important geopolitical actor, the US does not ignore the Transnistrian issue. Starting in 2014, the US Senate adopted in the second reading Law No. 2277, *"The Act on the Prevention of Aggression by the Russian Federation of 2014"* [16]. Through this Act, Ukraine, Georgia and the Republic of Moldova received the status of US allies (Title III, Sec. 303 in the text of the Act). On May 21, 2015, Congressman Joseph R. Pitts presented a statement stating that the presence of Russian military troops in the Transnistrian region violates the sovereignty of the Republic of Moldova and is contrary to the principles adopted at the Istanbul Summit in 1999. However, it is not presented that Moscow has fulfilled one of its two promises, and since 2007 the Russian Federation has suspended its activity within the CAF Treaty, mentioned in the Istanbul Declaration and according to which it had to withdraw its weapons and troops [22]. In February 2018, the US House of Representatives adopted Resolution H.RES.745 *"to enhance relations with the Republic of Moldova and support the territorial integrity of the Republic of Moldova"* during the second session. Points 9 and 10 of the Congress decision refer to the withdrawal of Russian troops from Transnistria. The US also undertakes to activate the negotiation process in the "5+2" format, point (11) [17]. Another Resolution (S. RES. 629) in this regard was adopted in September 2018 [18].

The peacekeeping operation in the Transnistrian region is a central instrument of Moscow's strategy in the Republic of Moldova. The operation is officially managed by the Joint Control Commission, which has equal representation of the parties involved in the resolution of the conflict alongside the OSCE and Ukraine, which have observer status. This arrangement is more part of the problem than a solution, as it allows the Transnistrian side (unrecognized entity) to establish its military in the Security Zone. Also, the Transnistrian side can use its right of veto within the UCC to block all unwanted initiatives. In this direction, Russia has an important leverage. Moscow does not want to lose control of this operation, including other peacekeeping operations in the post-Soviet space, and is fighting any initiatives that intend to change the format of peacekeeping forces.

Consequently, at present and in the near future, we can exclude the replacement of the current peacekeeping format in the Transnistrian region with an international civilian contingent [12, p.39]. This is facilitated by the fact that the OSCE has little chance of finding a solution for the conflicting parties, especially until the end of military confrontations between Russia and Ukraine. There is no doubt that the last word in the settlement of the Transnistrian conflict (as in the other "frozen conflicts" in the post-Soviet space) will be said by Moscow [12, p. 40]. It is important to note that, despite all deductions from Article 11 (2) of the Constitution of the Republic of Moldova [23], which prohibits foreign military presence on the territory of the Republic of Moldova, Moscow has consistently indicated that it will remain in the Transnistrian region, citing, as Tiraspol, the following arguments: OGRT is an important factor for the defense of Russia's strategic interests in the region; the contingent of Russian troops within the peacekeeping mission is a security guarantee for Transnistria (*de facto* protects the status of the Transnistrian region) [10, p. 40]; if Russian troops leave the Transnistrian region, a geopolitical vacuum will be created that can be filled by the US or NATO; in connection with the expansion of NATO to the east, the Transnistrian

region and the contingent of Russian troops fulfill not only an important role of peacekeeping, but also a role of strategic deterrence; Transnistria is a region of "strategic intersection" between Ukraine and Romania, as well as a "gateway" to the Balkans, where Moscow projects its influence [12, pp.43-45].

Conclusions. The change in the international order naturally leads to all parties involved in the settlement of the Transnistrian conflict being interested in resolving the dispute. But, as in other regions of the post-Soviet space (Abkhazia, South Ossetia, Nagorno-Karabakh), there are forces interested in the persistence of instability. This is a completely different matter from a negotiation process with intermediaries, guarantors and observers. The abundance of international actors and the evolution of military events in Ukraine further complicated the negotiation on the issue of stationing Russian troops in the Transnistrian region. Differences and national interests prevent any substantial cooperation [14, pp.242-248]. According to the Constitutional Court of the Republic of Moldova, the military contingent of the Russian Federation is stationed on the territory of the Republic of Moldova contrary to the constitutional provisions. Moreover, on June 22, 2018, the UN General Assembly, during session No. 72, adopted the Resolution regarding the complete withdrawal of foreign military troops from the territory of the Republic of Moldova (Document A/RES/72/282) [19]. The Russian Federation comments on these measures as counterproductive and provocative, which contribute to the destabilization of the negotiation process and the peacekeeping format. Thus, there is a lack of a coherent international and regional consensus regarding the OGRT and the role of these troops in the peacekeeping mission, and against the background of the complexity of the security space in the region, no real instruments are created to contribute to solving the problem regarding the current format of the peacekeeping mission from the Transnistrian region.

Regarding the peacekeeping mission, currently, the Chisinau Government believes that the existing peacekeeping operation has lost its relevance and that it should be transformed into a civilian mission under an international mandate. This objective has been pursued in all activity programs of the Government of the Republic of Moldova in recent years. At the same time, the Tiraspol authorities are categorically in favour of keeping the current peacekeeping format, highlighting its effectiveness (on average, since the operation was established, approximately 50 conflicts have been prevented and resolved annually). The military character of the format is necessary, precisely this being the guarantee of efficiency according to Tiraspol. Russia, for its part, approaches the pacification mission and OGRT in the Transnistrian region from a regional defence perspective.

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THE CONCEPT OF VIOLENT CRIMALITY BASED ON GENDER

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Summary

Researching the phenomenon of gender-based violent crime is essential as it aims to understand and address a serious and widespread social issue. This form of violence not only directly affects its victims but also has devastating consequences on families, communities, and society as a whole. Preventing and combating gender-based violent crime is one of the main objectives of modern society and the state, seen as their response to the illegal actions of individuals. Over time, the factors contributing to the development of crime have been studied and addressed at various stages, in line with the state's developmental phases. Currently, the rational and scientific formulation of tasks in the field of crime prevention becomes crucial, aiming to improve criminal legislation, criminal procedure, and enforcement legislation. The main direction focuses on intensifying the implementation of incentive measures aimed at promoting law-abiding behavior and conscious, informal choices.

Keywords: notion, concept, crime, criminality, gender-based violence, violent crime, domestic violence, physical, interdisciplinary approach, gender factors.

Introduction. Violent crime, defined as an extreme manifestation of criminal behavior, encompasses a wide range of acts, from street robberies and thefts committed with intimidation to the use of weapons or other coercive methods intended to instill fear and control situations or individuals. This type of crime not only has an immediate negative impact on victims through the fear and anxiety it generates, but often escalates into more serious violence as perpetrators seek to protect their personal interests or seek revenge.

In the specialized literature, violent crime is interpreted through various criminological theories that contribute to a deep understanding of the mechanisms and dynamics underlying this negative phenomenon. Theories such as anomie, social bonds, and social control offer different perspectives on how individuals deviate towards violent behaviors, influenced by certain social or personal factors. Additionally, the theory of violent subcultures and labeling theory explore the influences of groups and social labels in perpetuating this type of behavior.

In the context of this paper, we aim to examine violent crime from a gender perspective, investigating how gender factors influence the manifestations of criminal violence and its interpretations within the aforementioned theories. The analysis will include an exploration of relevant concepts and methodologies, with the goal of more clearly conceptualizing violent crime on a gender basis and identifying effective solutions to combat this disturbing phenomenon.

Through this approach, the article aims to contribute to the existing specialized literature,

offering new perspectives and insights on the intersection of violent crime and gender, with a view to developing better-adapted strategies for prevention and intervention in such cases.

Methods and materials applied. To conduct this comprehensive analysis of violent crime in a gender context, our study relied on a combination of qualitative and quantitative methods, which allowed for an in-depth understanding and detailed exploration of the phenomenon. Among the main methods applied were documentary analysis, observation analysis, critical analysis, analysis, synthesis, and deduction.

Discussions and results obtained. *The Anomie Theory*. The theory of anomie, initially formulated by Emile Durkheim and later developed by Robert Merton [1, p.54-60], suggests that violent crime arises as a response to the gap between the cultural goals encouraged by society and the legitimate means available to individuals to achieve these goals. Merton argues that in societies where the emphasis is placed on material success, individuals who lack the necessary resources to achieve these goals through legitimate means may resort to deviant behaviors, including violence, to satisfy their aspirations. This theory is frequently cited in the specialized literature to explain the increased rate of crime in economically disadvantaged urban areas.

The general strain theory. General strain theory, extended by Robert Agnew from Merton's theory of anomie, argues that crime can result from various forms of tension or 'strain'. This includes frustration caused by failure to achieve personal goals, the loss of important relationships, or exposure to negative or unfair treatment. This theory has been particularly applied to understand violence among adolescents and young adults [2, p.5].

These theories help us understand that both men and women can resort to violence in response to social and personal pressures, but the ways and contexts in which these pressures are experienced often differ by gender. Men may be more prone to violence as a way to assert control and social status, while women may resort to violence in contexts of self-defense or in response to abuses suffered.

Social bond theory. Travis Hirschi, in his theory of social bonds, proposes that the likelihood of engaging in criminal behavior is inversely proportional to the strength of an individual's social bonds [3, p.3]. These bonds include commitment to conventional activities, involvement in relationships, beliefs in social norms, and attachment to others. Individuals with weak social bonds are more prone to adopting violent behavior because they do not feel constrained by the same norms that govern the behavior of the majority. This theory has been extensively applied to examine juvenile delinquency and violence among youths.

Therefore, this approach suggests the idea that the weakening of social bonds may have different effects depending on gender. Women with weak social bonds may be more vulnerable to victimization, while men are more likely to become aggressors. Promoting strong social bonds and effective self-control can reduce the risk of violent behavior.

The eco-social perspective. Eco-social approaches, such as that formulated by Robert Sampson and his colleagues, emphasize the influence of social structures and community-level processes on crime rates. According to this perspective, areas with weak social cohesion, low inter-individual trust, and reduced levels of informal social surveillance are more likely to experience high rates of violent crime. This framework has contributed to the development of crime prevention programs that encourage community strengthening and civic engagement.

Social control theory. Social control theory, proposed by Michael Gottfredson and Travis Hirschi in their work [4], argues that delinquency results from insufficient self-control. Individuals with low self-control are prone to seek immediate gratification and are less capable of evaluating the long-term consequences of their actions. This perspective is frequently used to explain not only violent crime but also other forms of deviant behavior [5].

The theory of violent subcultures. The theory of violent subcultures, developed by researchers such as Marvin Wolfgang and Franco Ferracuti, proposes that in certain communities, violence

is seen as an acceptable form of expression and conflict resolution [6]. This type of behavior is often culturally reinforced and transmitted, being considered a norm in certain social groups. This explains, for example, the high prevalence of violence in youth groups or gangs.

Additionally, these approaches demonstrate how cultural gender norms can encourage violent behaviors, especially among men. Fighting against these norms and promoting non-violent behavioral models within subcultures is essential for reducing the rate of violent crime.

Routine Activity Theory. The routine activity theory, formulated by Lawrence Cohen and Marcus Felson, suggests that the crime rate is influenced by daily opportunities for committing crimes. It emphasizes the simultaneous existence of three elements: a motivated offender, a vulnerable target, and the absence of a capable guardian. The theory is useful for understanding the contexts in which violence frequently occurs, including urban crime and domestic violence.

This theory offers a perspective on how the structuring of daily activities and surveillance can differently influence violent behaviors based on gender. Women are often victims in private places, while men are more frequently aggressors in public spaces. A better understanding of specific contexts can guide preventive strategies.

Labeling theory. Labeling theory, associated with Howard Becker and others [7], focuses on the process by which individuals are labeled as deviants by society. Once an individual is labeled as a "criminal" or "violent", they may begin to adopt this identity as part of themselves, which can lead to the perpetuation of deviant behavior. This also explains how community responses to crime can sometimes exacerbate the problem.

This theory highlights how social stigma based on gender can perpetuate cycles of violence. Men labeled as "violent" are likely to continue exhibiting such behaviors, while women may be labeled as 'victims', which can limit their access to resources and justice.

Phenomenological Theory. The phenomenological theory, or interactionist perspective, explores how individual experiences and subjective interpretations of reality influence deviant behavior. It emphasizes personal decisions and the social contexts in which individuals choose to commit violent acts, highlighting the importance of understanding the perspectives of offenders to develop effective prevention and intervention strategies.

The analysis of the relevant criminological theories discussed above shows that gender not only influences the ways in which violent crime is perpetrated and experienced but is also essential in understanding the dynamics and prevention of this type of crime. By integrating a gender perspective, we can develop a more comprehensive concept of 'gender-based violent crime,' which recognizes and addresses the following fundamental aspects:

Differences in motivations and contexts. Violent crime occurs in various contexts and with different motivations, which can vary significantly between genders. Men are often involved in violence that seeks to affirm power or status, while women are frequently involved in acts of violence in response to threats or abuses. This new concept must recognize how gender power structures and social norms shape violent behaviors.

The impact of gender social norms. Gender norms contribute to shaping attitudes and behaviors related to violence. In many cultures, masculinity is associated with aggressiveness and dominance, while femininity is often linked to passivity and submissiveness. Through a new concept of gender-based violent crime, these stereotypes must be critiqued and challenged, promoting social norms that support gender equality and reject violence as a method of conflict resolution.

Implications for prevention and intervention. Preventive and intervention approaches must be gender-sensitive, taking into account the specific needs and vulnerabilities of each gender, as well as their potential to contribute to violence prevention. Programs targeting men and boys might focus on redefining notions of masculinity and developing skills for managing emotions and conflicts, while initiatives aimed at women and girls could emphasize empowerment and self-defense strategies.

Legal and Public Policy Framework. Legislation and public policies must recognize and address the specifics of gender-based violent crime. This includes the development of laws that protect victims of gender-based violence, as well as policies that promote gender equality and discourage cultural norms that perpetuate violence.

By recognizing the essential role of gender in the forms and manifestations of violent crime, this new concept can provide a solid foundation for future research and for the development of more effective policies and programs that address not only the symptoms but also the root causes of gender-based violence. This holistic and integrated approach is crucial for building a safer and more equitable society for all its members.

Gender-based violence reflects the idea that violence often serves to maintain structural gender inequalities and includes forms of violence directed against women because they are women or that disproportionately affect women. It encompasses, but is not limited to, physical, sexual, and psychological harm occurring in the family, the wider community, or perpetrated or tolerated by the state. Analyzing gender-based violence involves understanding the social mechanisms within a particular culture that maintain women's subordination or lower social status and what types of male-female dynamics are allowed within given social and cultural frameworks. It requires trying to understand which cultural, economic, and social factors maintain women's subordination and what impact this has on the physical and mental well-being of both women and men. It also involves understanding the specific vulnerabilities of different groups of women and the particular dynamics of violence against them. Violence is often used to maintain hierarchies between and among men and women, as well as to prevent women from claiming full citizenship in terms of rights. This means that the forms of violence used to control, intimidate, or coerce women into certain forms of behavior can vary from intimate terrorism to war atrocities.

In the ongoing recognition that violence against women occurs as a result of women's position in society, the definition includes acts that violate or adversely affect women's rights and freedoms, such as their denial. Denying the gender-specific nature of most violence, especially acts that affect both women and men, has popularized the term 'violence against women', which implies the existence of a gender-based cause of violent acts and a consequence of all violence as a continuation of male dominance and control, maintaining inequality. This term has been used since the mid-1990s by many women's organizations and has been more politically effective than 'gender-based violence' in that it shifts the focus from a de-genderized issue seen as a 'social problem' to a political issue concerning power and control.

The United Nations Declaration on the Elimination of Violence against Women [8] provides us with a more specific and extended definition, offering a typology of different forms of violence. It includes physical, sexual, and psychological violence occurring within the family and the wider community; and violence that occurs in specific state institutions, such as the military or prison systems. In the same context, violence against women encompasses acts that result in or are likely to produce physical, sexual, or psychological harm to women, threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life.

Therefore, gender-based violence can be understood as a situation where there is a violation of human rights and a discrimination issue in which a woman suffers disadvantage and/or violence because of her gender [9, p.268]. This definition is important in recognizing the fact that violence and inequality against women are distinct from those against men and are overwhelmingly experienced by women. The term 'human rights violation' acknowledges that violence against women is a violation of fundamental human rights, while 'discrimination issue' asserts that violence against women is a problem closely linked to the status and position of women in society. The definition [10, p.55] is broad in that it reflects the many contexts in which violence against women occurs, yet it narrows the focus to harm specifically directed against women because of their gender. Therefore, gender-based violence is used as a specific term where harm against

women as individuals or as a group is the result of normative gender role expectations, leading to a general acceptance of male authority and the general subordination of women to men, resulting in disparate power relations between men and women [9, p.55]. The definition proposed by Heise reflects the nature of violence against women.

In this context, reviewing the literature on defining and delineating the concept of gender-based violent crime is essential for understanding and addressing this complex social issue. In the specialized literature, gender-based violent crime is defined as 'any form of violence that is predominantly or exclusively directed against a person or groups based on their sex or gender identity. This type of violence can include acts such as physical assault in the family, on the street, rape, sexual harassment, human trafficking, and many other forms of violence.

For example, gender-based violence occurs within partnership relationships, in public or private institutions, work environments, or public spaces. Additionally, it is important to recognize that victims and perpetrators can be of any gender, and gender-based violence is not limited to women but can also affect men or other vulnerable groups.

The concept of gender-based violence is widely recognized internationally as not only a problem of physical or emotional abuse but also one closely linked to discrimination and gender inequality. The text emphasizes the role of state obligations in protecting human rights, especially those of women, through various means including legislation and regulations that punish and prevent violence against women.

Since 1975, UN conferences and the 1993 Declaration on the Elimination of Violence Against Women have marked significant moments in increasing international attention to this issue. Fundamental documents such as the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights underline the right to equal treatment and protection against discrimination, which are essential in combating gender violence.

The CEDAW Convention (Convention on the Elimination of All Forms of Discrimination against Women) plays a significant role in this context. Article 1 of the Convention defines gender violence as a form of discrimination, and Article 5 addresses the role of gender stereotypes in perpetuating this discrimination. CEDAW has been proactive in including this issue in discussions with state parties, in its jurisprudence, and through the work of the Working Group on Gender-Based Violence against Women.

An important aspect of the CEDAW Convention is the recognition that gender violence often occurs in a context of broad discrimination and social stigma. It emphasizes that an intersectional approach, which examines how different forms of discrimination intersect and amplify the risk of violence, is essential for an effective understanding and combating of gender violence. This allows for a more comprehensive interpretation of issues, thus contributing to the creation of more effective solutions tailored to the specific context of gender discrimination.

In the context of UN provisions, the definition of violence against women includes not only physical acts of violence but also psychological and sexual abuse, threats, coercion, and arbitrary deprivation of liberty, in both public and private spaces. This reflects an understanding of gender violence as a pervasive and diverse violation of human rights that requires an extensive and integrated approach for eradication and prevention.

Through these efforts, the UN and its member states aim not only to protect women's rights but also to change the cultural and institutional norms that perpetuate inequalities and gender violence, thus engaging in a continuous struggle for equality and social justice.

The definition of violence against women, formulated by the United Nations in 1993, reflects a global commitment to recognizing and combating gender violence as a human rights issue and a form of discrimination against women. This definition is crucial for understanding and addressing gender-based violent crime, providing a comprehensive framework for member states in formulating policies and legislation.

Conclusions and recommendations. In conclusion, defining the concept of gender-based violent crime requires a comprehensive and nuanced approach that considers the legal, social, and psychological aspects of violence. It is essential to recognize that gender violence is not limited to obvious physical assaults but also includes subtle forms such as psychological and emotional violence, which can have profoundly harmful effects on victims.

National legislation must recognize and penalize all forms of gender-based violence, whether it is physical assault, rape, sexual harassment, or domestic violence. It needs to be detailed and specific, covering a wide spectrum of violent acts and ensuring protection for all victims, regardless of their gender.

Gender inequalities and cultural stereotypes are often at the root of gender violence. Therefore, combating this type of crime involves not only legal sanctions but also educational programs and awareness campaigns aimed at changing discriminatory attitudes and behaviors in society.

It is crucial to recognize the psychological impact of gender violence on victims. Support services and early intervention are essential for victim recovery and for preventing perpetrator recidivism. Gender-based violent crime does not affect all individuals equally. Factors such as race, social class, sexual orientation, and gender identity can influence individuals' experiences with violence and access to justice and support.

Therefore, a comprehensive definition of gender-based violent crime must be inclusive and context-sensitive, reflecting the complexity of how violence is experienced and perpetuated in different social and cultural contexts. A firm commitment from states to address these aspects through legislation, education, and public policies is essential for effectively combating and eradicating gender violence.

Based on the analysis of the theories discussed and the specific characteristics of gender violence, an appropriate definition of the concept of gender-based violent crime could be formulated as follows: gender-based violent crime is any act of violence that manifests through physical, sexual, or psychological harm directed against a person based on their sex or gender identity. This includes, but is not limited to, physical assaults, rape, sexual harassment, domestic violence, human trafficking, and other forms of abuse, whether occurring in public or private spaces. Gender-based violent crime is profoundly influenced by structural inequalities and gender stereotypes, recognized as an extreme form of discrimination and a serious violation of human rights.

This definition emphasizes both the violent acts explicitly recognized in legislation and the need to consider the broader context of discrimination and gender inequality, as well as the profound impact violence has on individual and social lives. Additionally, it recognizes that gender violence can affect anyone, regardless of their gender, but is predominantly directed against women and girls due to persistent patriarchal structures. This is a crucial step in addressing and effectively combating this complex issue.

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RESTRICTIONS AND SOLUTIONS IN THE APPLICATION OF LEGISLATION IN CRIMINAL PROCESS

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Summary

The conduct of criminal proceedings, with all the sequence and complexity of activities it entails, would be impossible without accessible and predictable norms. This assertion is all the more valid as the achievement of the purpose of criminal proceedings must be carried out while respecting the fundamental rights and freedoms of individuals. From this perspective, the legislature's tendency to include all procedural normative acts in a single legislative act is understandable. The codification of criminal procedural legislation, with the concentration of procedural norms in a single normative act, evidently contributes not only to predictability but also to the accessibility of the law used in criminal proceedings. At the same time, the complexity of criminal proceedings also complicates the codification of procedural legislation. The solutions used by the legislature in this process, to be doctrinally developed and properly applied in jurisprudence.

Keywords: criminal proceedings, criminal procedural law, procedural norms, principle of legality.

Introduction. In accordance with the provisions of Article 2 of the Criminal Procedure Code of the Republic of Moldova (CPC RM[1]), criminal proceedings are regulated by the provisions of the Constitution of the Republic of Moldova, international treaties to which the Republic of Moldova is a party, and respectively by the Code of Criminal Procedure.

The same article stipulates that the general principles and norms of international law and international treaties to which the Republic of Moldova is a party constitute integral elements of criminal procedural law and directly give rise to human rights and freedoms in criminal proceedings.

Furthermore, in accordance with the provisions of paragraph (3) of the aforementioned article, the Constitution of the Republic of Moldova takes precedence over national criminal procedural legislation. No law regulating the conduct of criminal proceedings has legal force if it contradicts the Constitution.

At the same time, the relationship between the Code of Criminal Procedure and other national laws is stipulated in Article 2 paragraph (4) of the CPC RM, a provision from which it follows that legal norms, with procedural character from other national laws, can be applied only if they are included in the Code of Criminal Procedure.

Methods and materials applied. In drafting this article, theoretical and normative materials, relevant national and international jurisprudence were utilized. Additionally, various scientific investigation methods specific to theory were applied within the study, such as: logical method,

[1]Here and throughout, the Criminal Procedure Code, Law of the Republic of Moldova No. 122/14.03.2003 Official Gazette 248-251/447, 07.06.2003.

comparative analysis method, analytical method, etc.

Research purpose. The aim of this research is to analyse the relevant procedural criminal law framework and domestic jurisprudence in criminal matters, as well as to examine how the criminal procedural law is understood and applied by the judicial authorities.

Discussions and results obtained. A prominent issue arising from the restriction imposed by the provisions of Article 2 paragraph (4) of the CPC RM concerns the prohibition on using procedural norms from other laws in criminal proceedings. This prohibition, upon being brought to the attention of the Constitutional Court for constitutional review, was elucidated as follows: "In order to unify the procedural legal framework and eliminate confusing and contradictory provisions, with the aim of respecting the fundamental rights and freedoms of all individuals involved in criminal proceedings, the legislator stipulated that legal norms with procedural character from other national laws can be applied only if they are included in the Criminal Procedure Code. Such legislative technique is intended to ensure the elimination of inconsistencies between the provisions of the Criminal Procedure Code and the procedural criminal norms contained in other laws, ensuring coherent, certain, and uniform application of the respective norms, thus guaranteeing full respect for human rights and freedoms.

The Criminal Procedure Code determines the procedural order, limits, and modalities of judicial activities within the territory of the Republic. Being an organic law, from the perspective of the general constitutional provisions set forth in Article 72, the Criminal Procedure Code does not take precedence over other organic laws. However, as a special law, according to the general rules of law, regardless of the date of adoption, it gains superiority over other organic laws according to the principle of *lex specialis derogat generali*.

Therefore, the legislator, aiming to achieve the constitutional principles of the rule of law, legality, and protection of the fundamental rights and freedoms of individuals in the field of criminal justice, by codifying the norms regulating the conduct of criminal investigations and the adjudication of criminal cases in court, was entitled to legislate the priority of the Criminal Procedure Code over other laws regulating similar nature relationships.

The provisions regarding the primacy of the Criminal Procedure Code in establishing norms with procedural criminal character, stipulated by Article 2, paragraph (1) and paragraph (4), contested in the referral, correspond maximally to the codification of criminal law, ensuring its realization as substantive law in the most appropriate procedural form" [1]. Therefore, the conclusion that arises from the observations made by the Constitutional Court is that the Criminal Procedure Code represents the only law regulating criminal proceedings, with the exception of the Constitution and respectively of the international normative acts to which the Republic of Moldova is a party.

At the same time, the normative provisions mentioned seem to be somewhat contradictory to those stipulated by the legislator in paragraph (5) of the same article, according to which, in the conduct of criminal proceedings, laws and other normative acts that annul or limit human rights and freedoms, violate judicial independence, the principle of adversarial proceedings, as well as contravene universally recognized norms of international law and the provisions of international treaties to which the Republic of Moldova is a party, cannot have legal force. On the one hand, the legislator asserts the monopoly of the Criminal Procedure Code in criminal process, while on the other hand, it limits the power of other laws in the conduct of criminal proceedings if they limit human rights and freedoms, judicial independence, etc. The question arising from the above is whether the Criminal Procedure Code holds the monopoly in regulating criminal process, and if so, how should the prohibition on using normative acts that annul or limit human rights and freedoms be understood, or if other laws (with the exceptions mentioned) can still be applied in criminal proceedings, then how should the prohibition in Article 2, paragraph (4) of the CPC RM be understood.

Consequently, the problem proposed for resolution in the present scientific endeavour pertains to how the provisions of Article 2, paragraph (4) of the CPC RM should be understood so as not to jeopardize the purpose and tasks of criminal proceedings. In this regard, the author B. Glavan, for example, mentions that "the special investigative activity is regulated by several normative acts, among which Law No. 59/2012 and the Criminal Procedure Code are particularly distinguished. Understanding the structure of the special investigation regulation system and the interconnection of the norms reflected in these documents are inherently linked to the restrictions imposed by Article 2 paragraph (4) of the CPC, which prohibits the application of procedural norms from other national laws, including Law No. 59/2012" [2, p.35].

On another note, criminal proceedings are to be understood in accordance with the provisions of Article 1 of the CPC RM, as the activity of the law enforcement authorities and the courts with the participation of the parties to the proceedings and other persons, carried out in accordance with the provisions of the Criminal Procedure Code.

Clearly, legality is one of the fundamental principles of criminal proceedings. We fully agree in this regard with authors who argue that „the principle of legality is at the basis of the entire legal system, obviously finding expression in criminal process, which, we recall, is an activity regulated by law. It is a general principle, consisting of the obligation of citizens, public officials, and law enforcement agencies to respect the law" [3, p.79].

However, if legality as a principle was directly mentioned by the legislator in Article 7 of the CPC RM, then in Article 2 of the CPC RM, it seems that the legislator rather chose to indicate the sources of procedural criminal law. From this perspective, it follows that Article 2 of the CPC RM enumerates the sources of procedural criminal law, while Article 7 of the Criminal Procedure Code refers to the obligation to respect the principles established by these sources. Both articles refer to the hierarchy of norms in criminal proceedings.

This approach is further complemented in Article 7 of the CPC RM by establishing the mechanism for referral to the Constitutional Court, as well as by stipulating the obligation to comply with the provisions of international treaties to which the Republic of Moldova is a party in the field of human rights, decisions of the Constitutional Court, and the European Court of Human Rights.

At the same time, starting from the idea that the principle of legality presupposes that "on the one hand, there must be a predictable and accessible law, in accordance with constitutional standards and the protection of human rights, which provides procedural rules, and on the other hand, it is necessary for acts and evidence in criminal process to be carried out in accordance with the law" [4, p.4], then we could argue that according to the legislator's vision, Article 2 of the CPC RM corresponds to the first part of the statement, while Article 7 of the CPC RM corresponds to the second part.

Moreover, returning to the provisions of Article 2 of the CPC, from the perspective of the conditionality stipulated in paragraph (4) of this article regarding the obligation to include procedural legal norms from other national laws in the Criminal Procedure Code as a condition for their applicability in criminal process, we can highlight at least two aspects: a) the legislator allows the use of provisions from other laws in criminal proceedings, and; b) the application of procedural norms from other laws in criminal proceedings is conditioned by their inclusion in the Criminal Procedure Code.

Similarly, the provisions mentioned apparently lead us to at least two conclusions initially. Firstly, the procedural norms contained in higher legal acts than the criminal procedure code can be applied in criminal proceedings without being included in the Criminal Procedure Code. As evidenced by the provisions of Art. 2 of the Criminal Procedure Code of the Republic of Moldova, the legislator took into account the Constitution of the Republic of Moldova and the international treaties to which the Republic of Moldova is a party. In contrast, procedural legal norms from other laws could be applied in criminal proceedings only if they are included in the Criminal Pro-

cedure Code. The question to be addressed next concerns how the legislator chose to incorporate procedural norms from other legal acts into the Criminal Procedure Code.

The tendency of the legislator to include all procedural normative provisions in the Criminal Procedure Code is a commendable concept, as such an approach would add value to the predictability of criminal procedural legislation. For instance, author M. Udroiu, regarding the unification of the normative framework regulating special surveillance or investigation methods, mentions that "unlike the old Code of Criminal Procedure, the New Code has closely adhered to the requirements of predictability and accessibility of regulation, as presented above with reference to European jurisprudence. Additionally, the new Code has grouped within the same chapter the majority of special investigation and surveillance methods that were previously provided for both in the old Code and various special laws (for example, in Law No. 161/2003 on certain measures to ensure transparency in the exercise of public functions, public offices, and in the business environment, prevention and sanctioning of corruption, Law No. 508/2004 on the establishment, organization, and functioning within the Ministry of Public of the Directorate for Investigating Organized Crime and Terrorism (D.I.O.C.T.), Law No. 78/2000 for the prevention, detection, and sanctioning of corruption, and Article 15 of Law No. 39/2003 on the prevention and combating of organized crime, while Law No. 255/2013 for the implementation of Law No. 135/2010 on the Criminal Procedure Code and for amending and supplementing certain normative acts containing procedural provisions, repealed the provisions of special laws so that, with the entry into force of the New Code, there would be a structured and uniform legislative approach in this matter" [4, p.441].

In the same vein, author B. Glavan echoes this sentiment, referring to the position expressed on this subject by the Constitutional Court, when he argues that "the premises invoked by the Constitutional Court, which may have been the basis for the inclusion in the Criminal Procedure Code of the provision of Art. 2, para. (4) of the CPC, could be understood and may have had a noble purpose of eliminating discrepancies and ensuring more efficient protection of the fundamental rights and freedoms of all persons involved in criminal proceedings" [2, p.35].

However, the author also observes that „all these, the concept of concentrating all procedural normative rules from other laws into a single normative act, such as the Criminal Procedure Code, thus building an exclusively vertical system of sources of criminal procedural law, seems to us unrealizable and impractical" [2, p.35].

The statement seems to be supported by the perspective presented by the author. However, what emerges from the mentioned points is the impossibility of this exercise in the conditions where criminal procedure involves a whole series of activities whose regulation in the Criminal Procedure Code is neither feasible nor necessary. On the other hand, usually, these activities are already regulated at the legislative level. Once regulated, even in other laws, reiterating the same provisions in the Criminal Procedure Code seems to be a futile exercise and practically unrealizable from a legislative technique perspective.

On another note, returning to the formula used by the legislator in Art.2, para.(4) of the Criminal Procedure Code of the Republic of Moldova, we can observe that the legislator restricted the application in criminal proceedings only to „*legal norms with procedural character*".

According to opinions expressed in specialized literature, „criminal procedural law encompasses both procedural rules and procedural regulations.

Procedural rules prescribe the actions to be taken to drive the criminal proceedings forward, including their initiation, conduct, and conclusion. All procedural rules indicate under what conditions procedural actions occur and which authorities or individuals have the right, duty, or privilege to carry them out.

Procedural regulations, as complementary rules to procedural rules, specify the manner in which procedural actions must be carried out to achieve their intended purposes" [5, p.24].

From this perspective, an observation regarding the provision in Art.2, para.(4) of the Criminal Procedure Code of the Republic of Moldova would be that the restriction in question only applies to norms with procedural character, not to those with procedural character. Thus, the legislator's approach in this matter (if we were to insist on the obligation to include procedural norms in the Criminal Procedure Code) appears to be not only more pragmatic, but also more likely to be achievable.

In another context, moving beyond the provisions of the Criminal Procedure Code, we can observe that one of the solutions adopted by the legislator to avoid duplicating the same provisions in different normative acts is the use of blanket norms within criminal procedural legislation. For example, according to the provisions of Art.6, para.(14) of the Criminal Procedure Code of the Republic of Moldova, *classified information* is considered information, documents, or material, regardless of their form and physical characteristics, to which a certain level of classification has been attributed in accordance with Law No. 245/2008 on state secrets. Similarly, although the legislator has mandated parallel financial investigations for certain offenses and regulated the manner of ordering them in Art.257 of the Criminal Procedure Code of the Republic of Moldova, to define the content of these activities, according to Art. 6, point (20/1) of the Criminal Procedure Code of the Republic of Moldova, the legislator also resorted to a blanket norm. In accordance with the mentioned provision, *parallel financial investigations* encompass the entirety of criminal prosecution actions, special investigative measures, and/or actions provided for in Law No. 48/2017 on the Agency for the Recovery of Criminal Assets conducted with the aim of accumulating evidence regarding suspects, accused persons, civilly liable parties, defendants, or convicts, their assets, and assets held by them as beneficial owners, as defined by Law No. 308/2017 on the prevention and combating of money laundering and terrorism financing, as well as the assets of the owner and administrator of the assets held by suspects, accused persons, civilly liable parties, defendants, or convicts as beneficial owners, for the purpose of recovering criminal assets.

Furthermore, such a procedure is also utilized by the legislator in criminal legislation, which is "interpreted in the strictest sense, with their explanation usually having a restrictive character. Contrary to this trend, in interpreting formal norms, the explanation of the law's meaning can be extensive, and analogical supplementation can function fully, as the goal is to achieve the best possible execution of concrete judicial activity" [4, p.25]. Moreover, the legislator has employed an analogical legislative approach in criminal legislation as well.

In this regard, according to the provisions of Art.1 of the Criminal Code of the Republic of Moldova (CC RM[2]), the Criminal Code is the sole criminal law of the Republic of Moldova. The Criminal Code is the legislative act that comprises legal norms establishing the principles and general and special provisions of criminal law, determining acts constituting offenses, and providing for the punishments applicable to offenders. However, the Criminal Code, especially in its Special Part, contains several references to other normative acts without which the legal classification of criminal acts would be impossible. For example, according to the provisions of Art.183, para.(1) of the CC RM, the violation of labour protection rules constitutes the breach by a person in a position of responsibility or by a person managing a commercial, public, or other non-state organization of the rules of industrial safety, industrial hygiene, or other labour protection rules if this breach has caused accidents or other serious consequences. However, this norm does not contain any rules regulating industrial safety, industrial hygiene, or other labour protection rules. These rules are regulated, for example, by the Occupational Health and Safety Law No. 186 dated July 10, 2008.

Similarly, according to Articles 252-253 of the Criminal Code of the Republic of Moldova (CC RM), both intentional insolvency and fictitious insolvency are criminalized. Additionally, the rules of the respective process are regulated by the Insolvency Law No. 149 dated 29.06.2012.

[2] Here and hereinafter, the Penal Code of the Republic of Moldova, Law of the Republic of Moldova no. 985/18.04.2002 Official Gazette 128-129/1012, 13.09.2002.

Furthermore, in relation to procedural criminal law legislation, the opinion expressed in specialized literature states that the provisions of extrapenal acts „do not establish new elements of the offense or impose criminal penalties...; rather, they concretize the provisions of criminal law" [6, p.155].

Conclusions. Referring to other normative acts, as it emerges from the provisions of the Code of Criminal Procedure, is a reality, a procedure that the legislator has resorted to in some situations where provisions from other normative acts can be applied in criminal proceedings (as it also emerges from the above-mentioned).

Thus, by resorting to blanket norms of the Criminal Procedure Code, on the one hand, the existing provisions of the Code of Criminal Procedure are concretized, and on the other hand, the repetition of the same norms in different normative acts is avoided. This statement is all the more valid considering that procedural law is not as rigid as substantive law.

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FORMS AND CONDITIONS OF CONSENT IN SEXUAL OFFENSES

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Summary

The current Criminal Code divides sexual offenses into two categories. In this context, it refers to sexual offenses committed without the victim's consent, which include Articles 171, 172, 173, and 175[1] of the Criminal Code, and sexual offenses where the victim's consent is present, as outlined in Articles 174 and 175 of the Criminal Code. In this regard, it is relevant to identify the forms and conditions through which consent can be manifested in cases of sexual offenses.

Keywords: consent, cyber harassment, sexual nature, online environment, coercion, threat, victim.

Introduction. Matthew Hale Hale states: "It is true that rape is a most heinous crime and therefore should be punished severely..., but it must be remembered that it is an easy charge to make and hard to prove and harder for the accused party to defend, however innocent the person may be" [1].

The history of law has made the notion of "consent" known as a controversial aspect of practice, from the earliest recorded writings of the Romans to the additions and opinions published in current doctrine.

The issue of consent is of major relevance in the legal field, especially in terms of the way in which various institutional branches come into contact with court judgments handed down on the basis of this concept (prisons, probation services, etc.).

Methods and materials applied. Theoretical, normative and empirical material was used in the preparation of this publication. In addition, several methods of scientific investigation specific to criminal theory and doctrine have been applied in order to carry out the research: logical method, comparative analysis method, systemic analysis, etc.

Therefore, taking into account that the Republic of Moldova on 14.10.2021 ratified the Istanbul Convention, it is evident that offenses regarding sexual life were due to undergo extensive changes to comply with international standards in the field.

The local Criminal Code introduced Article 1322 of the RM Criminal Code, which stipulates the notions of *"non-consensual sexual acts or actions of a sexual nature"* [3].

Thus, according to Art.133[2] para (3) of the Criminal Code of the Republic of Moldova "A sexual act or an action of a sexual nature which is accompanied by physical or mental coercion,

applied to the victim or another person, or in which the person's inability to defend himself or to express his will is taken advantage of, shall be considered as non-consensual" [3].

Discussions and results obtained. In the context of the regulation proposed by the Moldovan legislator, the term consent is not defined, rather, the conditions under which a sexual act or actions of a sexual nature become non-consensual are stipulated. The conditions of lack of consent arise from the following hypotheses:

1. Physical coercion of the victim;
2. Psychological coercion of the victim or another person;
3. The perpetrator taking advantage of the victim's inability to defend himself;
4. The perpetrator taking advantage of the victim's inability to express his/her will.

We will proceed to analyze the hypotheses set out above regarding lack of consent to sexual acts or actions.

Firstly, the notion of coercion has been identified by some authors as forcing a person, meaning using physical coercion or threats against them to overcome their resistance to a non-consensual sexual act (explicit coercion), or abusing the situation where the person is unable to express their will or defend themselves to engage in a sexual act (implicit coercion), which is a specific characteristic of the crime of rape [2].

1. *Physical coercion*. In criminal law, physical coercion can be identified as a cause that removes the criminal nature of the act; a mitigating circumstance, or a way of achieving the objective side of certain offences.

When we talk about physical coercion as a cause that removes the criminal nature of the act, it finds its legal regulation in Article 39 para (1) of the Republic of Moldova Criminal Code, which states that: "An act provided by Criminal Law, which has caused damage to interests protected by law as a result of physical or mental coercion, if as a result of such coercion the person was unable to direct his actions, shall not constitute an offence" [3].

At the same time, the Criminal Code of the Republic of Moldova identifies physical coercion as a mitigating circumstance provided by Art. 76 para. (1) letter h) of the RM Criminal Code: "committing the crime as a result of physical or psychological coercion, which does not remove the criminal nature of the act, or due to material, service, or other dependence" [3].

Physical coercion is of interest as a normative way of achieving the objective side of sexual offences.

Therefore, we derive the following conditions of physical coercion:

1) there is a physical constraint on the person which involves a force (an active energy) which cannot be resisted and which is exerted on the physical energy of a person in order to immobilize the latter's resistance;

2) physical force is directed to facilitate the realization of non-consensual sexual acts or actions.

2. *Psychological coercion*. Similar to physical coercion, psychological coercion can be identified as a cause that removes the criminal nature of the act; a mitigating circumstance, or a way of achieving the objective side of certain offences.

Specifically, in the context of psychological coercion as a means of achieving the objective side in the context of sexual offenses, it manifests as violence expressed through threats of force against the victim, their children, relatives, or close ones, with the purpose of overcoming the victim's resistance and forcing them to engage in sexual relations with the perpetrator. In cases of rape, only threats of such nature that can place the person in a state of helplessness, equal to the condition of physical powerlessness, can be considered psychological coercion. Other types of threats are not considered psychological coercion but may constitute separate offenses.

Under such circumstances, according to a Russian author M. Yakovlev, threats involving psychological violence are categorized into [4]:

– Threats of applying violence;

– Threats to disclose information that would defame the victim or their relatives, or to destroy property (some components require that such destruction be carried out in a manner that endangers the lives of multiple people);

– Threats whose content is not disclosed in the relevant article of the Criminal Code. This particularly occurs in the context of rape.

We consider such an approach to be completely erroneous. Psychological coercion cannot constitute a means of achieving the objective side of the crime of rape in this manner. In light of the aforementioned, the act could be classified according to the provisions of Article 173 of the Criminal Code, which addresses Sexual Harassment.

In this regard, we emphasize the opinion of A. Borodac: "Judicial practice and criminal doctrine have not accepted, ~~and~~ rightly so, the mentioned opinion, because these facts are less dangerous for society than those by which rape is characterized and do not create any vicissitude for the victim. It must therefore be borne in mind that in cases of rape, only threats of such a nature that can place the person to a standstill equal to a state of helplessness can be possible" [5].

In conclusion, psychological coercion must meet the following conditions from a criminal law perspective:

1) there is an act of coercion on a person's psyche through threats;

2) the threatened person or another person must be exposed to a serious danger;

3) the danger targeted by the threat must be of such a nature that it cannot be removed otherwise than by complying with the perpetrator's demands.

The danger must be serious, present or imminent and likely to occur. If the danger is not serious, it means that the threat was not likely to produce the mental pressure which characterizes mental coercion

The seriousness of the danger to the victim can only be determined by a psychiatric-psychological expert, not by the conclusion of the prosecuting authority. It is also important that the psychiatric-psychological conclusion be made shortly after the alleged threat, as the victim's feelings may be distorted over time, and emotional intensity may be influenced by external factors, which does not demonstrate a probable causal link between the alleged threat and the victim's fear in relation to possible consequences.

In such circumstances, it is not without reason that the doctrine mentions: "In cases of rape, only threats of such a nature that they can lead the person to a standstill equaling a state of helplessness are possible, meaning threats of applying force on the victim, children, relatives, or those close to her with the purpose of overcoming the victim's resistance and forcing her to engage in sexual relations with the perpetrator".

In the context of the above, the author Olesea Blaşu, attempted to distinguish between physical coercion and psychological coercion. According to her opinion, physical coercion is defined as those actions of the perpetrator manifested by coercion, forcing, or obliging the victim to commit certain acts or refrain from committing them against their will. In this case, the perpetrator's muscular activity expressed by the actions indicated as being directed towards committing or attempting to commit a sexual act, when the partner is obliged, forced or coerced to do so, which he or she would not do of his or her own free will [6].

As a result, we note that the delimitation of physical coercion from psychological coercion raises dilemmas in judicial practice, which is why it is essential to correctly delimit these two adjacent actions of the objective side.

3. *Exploiting the victim's inability to defend themselves due to young age*. Young age is not defined by criminal law, and doctrinal sources perceive it differently. However, in all cases, minors who have reached the age of 14 do not fall under the heading of young age.

L.L. Kruglikov notes that "young age, meaning not reaching the age of 14, does not always

mean that it involves a state of helplessness. It must be established whether the victim, by virtue of their age, could not understand the character and significance of the perpetrator's behavior" [7].

Stati V. specifies that: "a child who has a clear understanding of the meaning of the consent he or she gives to sexual acts or sexual contact is not of tender age. However, if the child does not have such an understanding, then inducing them to engage in sexual acts through deception should be qualified, as appropriate, under subparagraph b) of paragraph (3) of Article 171 or subparagraph a) of paragraph (3) of Article 172 of the Criminal Code of Moldova. This is because such a scenario implies that the victim is a young child" [8].

In this context, the question may arise as to whether or not we can use the term "young age" within the meaning of Article 171 para. (2) letter a) when the biological age of the victim does not correspond to the psychological age and the degree of intellectual development, which is below the age limit of the victim?

According to point (12) of the Plenum Decision of the Supreme Court of Justice (SCJ) of the Republic of Moldova No. 39 of 22.11.2004, "if there are doubts about the state of responsibility or the ability to perceive fairly the circumstances that are relevant to the criminal case, it is necessary to carry out a forensic expertise: psychological or psychiatric or psycho forensic.

In this regard, specialists in child and adolescent psychology (psychologist, social worker, educator) may be heard in court" [9].

Even if these actions had been taken by the prosecuting authority and the victim's intellectual development was below the age limit, this cannot be attributed to the accused/ defendant.

In this case, the perpetrator is not charged with those circumstances that cannot certainly be observed by an objective observer but only by a specialist/expert in the field.

In this case, too, the sexual act is carried out without the victim's consent "but unlike sexual intercourse by coercion, where the victim, having expressed her disagreement, resists the perpetrator, this time she does not express her disagreement and does not resist, because she is in a position where she cannot defend herself or express her will" [10].

4. *Exploitation by the perpetrator of the victim's inability to express their will*. In specialized literature, four states of helplessness are distinguished, excluding the possibility of the victim expressing their will in actions committed against them, due to their mental or physical state, namely:

1. The woman's inability to understand the surrounding reality and the real aspect of the actions committed. Such a circumstance occurs in cases of loss of consciousness, absolute alcoholic, narcotic or toxic intoxication which has caused deep sleep;

2. The person's inability to correctly assess the situation they are in, to understand the social importance of the actions committed concerning them. People who are young, mentally handicapped and mentally ill are often unable to assess facts and situations correctly;

3. In cases where the victim does not demonstrate willpower, for example, being in a state of emotional shock;

4. Helplessness is characterized by the victim's inability to resist the perpetrator due to infirmity, somatic illnesses, intoxication, or certain external circumstances [11].

Analysing the situations that attest to the lack of consent of the victim in the case of sexual offences, the natural question arises: what does the consent of the victim to perform a sexual act or actions mean and what form should it take?

In the text below, we will look at the forms of expression of consent that can be met in practice:

Consent must be given voluntarily, as a result of the person's free will, assessed in the context of the surrounding circumstances [...]". Such a concept has been implemented in the criminal laws of Romania, Ukraine, Germany, Belgium, Luxembourg, Croatia, Greece, etc.

In this sense, the verbal form of consent is to be understood *as the oral way of expressing*

consent to sexual acts or actions. It is the most common form of expressing consent to a sexual act or action.

The written form may be used where the victim has certain speech or expression impairments. It is a form most commonly used in the pornography industry in the form of contracts in which the parties express their consent in writing to perform sexual acts or actions.

The non-verbal language form of expressing consent – mimicry, gestures – is also a form of expressing consent. This also includes the situation of deaf-mutes whose language is non-verbal and who can only express consent through gestures and mimics that would give the perpetrator an indication of lack of consent to sexual acts or actions.

The form of expression of consent through physical acts is a way of opposing the victim's resistance to the perpetrator through certain actions such as pushing, biting, hitting, etc. The lack of some form of physical repression of the person when performing sexual acts or actions on him or her does not necessarily indicate the presence of consent. However, by virtue of temperament or other factors the victim may react differently. It is certain that the presence of physical forms of aggression against the initiator of sexual acts/actions in order to prevent the contact indicates the lack of consent.

An issue that needs to be addressed is the form of *online expressed consent.* Online sexual exploitation is a form of sexual abuse, involving the use of information and communication technologies for the purpose of sexual exploitation of individuals. The development of new technologies has initiated discussions on the subject, especially as the Internet has created the possibility of committing sexual abuse without restrictions of borders, geographical distances and time. Thus, sexual abuse and sexual exploitation online became new paradigms of social anxiety representative of the 2000s [12].

For this reason, the degree of victim vulnerability can be specified through two categories of factors:

a) *personal factors* - the mentally retarded or those who are normal but with lower IQ, individuals with modest educational attainment or those with little social and interactional experience may be easily victimized by offenders, who use lies and fraud; individuals who are physically disabled, the elderly or frail, minors, women; they are likely to be quite frequently targeted by violent offenders;

b) *situational factors* – some individuals are more likely to be victimized than others at certain times or in certain situations [13].

All of the above-mentioned factors are directly related to the forms of expressing consent in sexual offenses, as each case, each subject, has individual particularities.

Additionally, Chapter IV of the Criminal Code of the Republic of Moldova regarding sexual offenses does not explicitly include online components, in the sense that it does not expressly provide that actions of isolation or intimidation of the victim can be carried out using information and communication technologies. Likewise, actions of victim persecution online, through tracking them on all available networks, are not specified as offenses. In this regard, we consider it opportune to include provisions related to cyber stalking.

Cyber stalking can take many forms, but for the purposes of this paper it can include: unwanted, sexually explicit emails, text (or online) messages; inappropriate or offensive advances on social networking sites or via internet chat rooms; threats of physical and/or sexual violence via email, text (or online) messages; hate speech, language that denigrates, insults, threatens or is directed at a person because of their identity (gender) and other characteristics (such as sexual orientation or disability).

In the United Kingdom, in April 2015, sending private sexual photographs or videos without the subject's consent, with the intention of causing distress to those concerned, became an offence punishable by up to two years' imprisonment. In September 2016 it was announced that over 200

people had been prosecuted since the law came into force [14].

Conclusions. In conclusion, based on practice and jurisprudence involving careful study of victim consent-related cases, we believe, in accordance with the provisions imposed by the legislature, that the expression of consent regarding a certain activity must be carefully examined, especially the expression of consent in the online environment, which presents an increased risk both in qualifying harmful acts and in investigating these types of crimes. Significant efforts are required not only from state institutions but also from citizens to combat this phenomenon, in order to collectively reduce it.

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THE RIGHT TO SILENCE OF PERSONS AVOIDING CRIMINAL RESPONSIBILITY

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Summary

The procedure for the criminal investigation of persons who avoid criminal liability is included in the range of the most topical areas that are the focus of the criminal doctrine of the Republic of Moldova and Romania. The statistical data show us, unequivocally, that the criminal activity of people who evade criminal responsibility is constantly increasing, and the heinous crimes, which are often committed by applying acts of violence, fraud, corruption, etc., disturb the attention of society. Up to now in the Republic of Moldova and Romania, remarkable progress has been achieved in terms of the procedure of criminal prosecution of persons who evade criminal liability. However, continuous research and approaches that we address in the present study are necessary to eliminate the multiple deficiencies caused by the insufficient capacity of the normative procedural system, which must keep pace with the multiple transformations that society in the Republic of Moldova and Romania is going through, among which that of the right to remain silent of persons who evade in order to obtain the non-sanction of the committed acts.

Keywords: crime, evasion, analysis, criminal process, right to remain silent, liability, punishment.

Introduction. Research in the field of the criminal prosecution procedure for people who avoid criminal liability is absolutely necessary to ensure the process of developing future policies and programs in line with good European practices. The necessity of offering suggestions for promoting an adequate social reaction regarding the criminal prosecution procedure of persons who evade criminal responsibility and who are involved in criminal activities is also felt. Apart from this, the assimilation by the national law system of the standards prescribed by the community law constitutes an imperative of the time, which must be completed in order to achieve the European integration option of the Republic of Moldova. Based on the arguments cited, it is appropriate to approach the problem of the procedure of criminal prosecution of persons who avoid criminal liability by requesting the right to remain silent, conferred by law.

Methods and materials applied. Among the methods applied to the study we list the logical, comparative, analytical method. At the same time, the philosophical method is important when developing the study. We resort to a systematized and not spontaneous knowledge of the issue regarding the procedure of criminal prosecution of persons who avoid criminal liability by requesting the right to remain silent, in order to identify all the ways forward.

Discussions and results obtained. Being of Anglo-Saxon origin, the right to silence had a strong development in the American judicial system, being taken over by the jurisprudence and legislation of several states, ensured by international human rights mechanisms.

The right to remain silent is internationally recognized in the Covenant on Civil and Political Rights, adopted by the General Assembly of the United Nations on December 16, 1996, which also shows us the other guarantees of the person accused of having committed a crime, and that the person “shall not be compelled to testify against himself or to plead guilty” [1].

The ECtHR jurisprudence demonstrated a close connection between the right to remain silent and the right for the accused person to be assisted by a lawyer during the arrest, also the person is reminded until the interrogation begins that he has the right not to declare anything, but if he declared incompletely the court will take this attitude into account.

Relevant is Art.64 para. (2) index 10 of the Criminal Procedure Code (CPC) of the RM, in which the suspect can make statements or refuse: "the suspect, according to the provisions of this code, has the right (...) to make statements or refuse to make them" [2]. We can find this right more widely, chronologically over two articles, a right that can be found both in the suspect and the defendant: the accused, the defendant according to the provisions of this Code, has the right to (...) „to make statements or refuse to he draws their attention to the fact that if he refuses to give statements he will not suffer any adverse consequences, and if he does give statements they can be used as evidence against him".

Equally important is Art.66 para. (3) index 1: "to accept, at the request of the criminal investigation body, medical control, dactyloscopy, photography, to give the opportunity to take, based on the authorization of the investigating judge, samples of blood, body waste or other biological samples".

In Romania, this regulation regarding the right to remain silent is relatively recent, with Law No. 281/2003 [3] by which the CPC was amended with Art.70 para. (2), which aimed at the accused and the defendant: "The accused or the defendant is informed of the right not to make any statement, drawing his attention at the same time that what he declares can also be used against him" [4].

Also, another rule that is of particular interest was included in Art.143 para. (3) of the CPC of Romania, which determined the conditions under which the arrest was made, amended by the same Law No. 281/2003: "the prosecutor or the criminal investigation body will inform the accused or the defendant that he has the right not to make any statement – attention is also drawn to the fact that what he declares can also be used against him"; in the same CPC in Art. 332, which refers to the initiation of the judicial investigation, the article being later amended [5], taking the following form: "the president explains to the defendant what the accusation against him consists of. At the same time, it informs the accused about the right not to make any statement, drawing his attention that what he declares can also be used against him".

Having a different vision, the New CPC, mentions in Art.10 para. (4) t*he right to defense*, thus the judicial bodies are obliged to notify the suspect, the defendant of the existence of the obvious right not to give any statement: "before being heard, the suspect and the defendant must be reminded that they have the right not to make any statement". Relevant is the observation that in the new CPC it is not clearly stated whether it is about the first statement of the suspect or the defendant or if it is about all the statements of the suspect or the defendant. In the old CPC it was stipulated in Art.6 para. (5) that, the accused or defendant was informed of the right to be assisted by a lawyer before the first statement was taken. Thus, the new CPC does not refer to this mention, making it the interpretation of the law text and not clear that at every statement of the suspect or defendant they are warned that they have this right at every statement given before the judicial bodies.

In the mirror of what Ł/ we have explained above, it also leads us to the confusion of the terms "suspect or defendant", the person in question being initially a suspect and later a defendant must be warned twice. The double warning in the case of both the suspect and the accused is valid for the entire duration of the criminal process, regardless of its phases. In Art.83 CPC where the rights of the suspect and the defendant are included: "during the criminal trial, the defendant has the following rights: the right not to give any statement during the criminal trial, noting that if he refuses to give a statement he will not suffer any consequences unfavorable, and if he gives statements they can be used as evidence against him".

The similarity with the old text of Art.143 para. (3) CPC, the legislative text of the right to remain silent is preserved, from an article that stipulates a custodial measure, namely detention. Of course, there are also differences between the two legislations, the current legislation stipulates that the warning of both the suspect and the accused is done before the hearing, a fact that also results from the previous legislation, because the norm specified in Art.6 para. (5) above, addition that proves its applicability to the second amendment that the text reproduces, namely the introduction of the exception to the right to remain silent, the condition to transmit information regarding his identity.

From this point of view, it is clear that the judicial bodies are dictated the obligation to warn before obtaining information that the suspect or defendant can provide them about his identity. If a contrary thesis were to be accepted, it follows that the suspect or the defendant can be addressed verbally for providing information not only about their identity, but also for the deed, after which they will be warned, obviously unnecessary, that they have the legal right to a lawyer, to remain silent, at least with regard to his identity data, which were previously made available to the criminal investigation bodies.

It is not by chance that we are dealing with a fine distinction that is not without significance, otherwise holding a conversation between the criminal investigation bodies and the suspect or defendant, without the criminal investigation body warning in advance of the rights of the suspect or the defendant and obtaining by the criminal prosecution body of information that may be useful in the investigation without warning according to the mentioned legal text, can always generate a major risk of eliminating the obtained evidence.

The Romanian legislator can be criticized for settling on a framework text without the same precision as, for example, the Italian legislator. The Italian law explicitly states that evidence will never be used in a trial if the prosecuting body does not first warn the suspect or defendant that they have the right to a lawyer and the right to remain silent. Article 27 of the Italian Constitution [6] stipulates: "The accused are considered innocent until a final judgment is pronounced." Furthermore, the burden of proof regarding the charges, criminal responsibility, and the determination of punishment or preventive measures rests with the prosecutor.

In the new CPC, the non-self-incrimination of the witness was introduced as a novelty, which states that: "the witness statement given by a person who, in the same case, before the statement had or, subsequently, acquired the status of suspect or defendant cannot be used against him. The judicial bodies have the obligation to mention, on the occasion of recording the statement, the previous procedural quality".

Now it can be seen that this Art. 118 of the CPC of the Romania solves issues that were problematic in the past, it comes to light the fact that a person who in the same case has the capacity of a witness and later a suspect or defendant, in any order for the respective case. It should be noted that regardless of the interpretation of the phrase "cause", it is necessary to take into account the ECtHR jurisprudence which adopts an interpretation not limited to the same file, but extended regardless of whether it is a criminal investigation or by the court.

We believe that the text of the law sheds light on the Romanian criminal procedure, because a similar legislative regulation was not known until the new CPC. Thus, the witness can be granted criminal immunity with regard to the statements he gave before the criminal investigation body.

Another relevant aspect is that of the content of Art. 225 paragraph (8) of the new CPC which states: "Before proceeding to hear the defendant, the judge of rights and freedoms informs him of the crime he is accused of and the right not to make any statement, drawing his attention that what he declares can be used against him". The legislator preferred to iterate a new text in the CPC criminal procedure as an affirmation of the right to remain silent, namely at the moment of preventive arrest, a provision that was not found in the previous Code of Procedure. With this text introduced in the new CPC, compared to the ones set out above, it is like a real argument re-

garding the re-warning of the defendant, regardless of whether he had previously been heard and implicitly warned about this right. We have a hypothesis that cannot be ruled out with regard to the proposal for preventive arrest and a respective defendant was no longer heard, because he was evading criminal prosecution, he could not be detained in the case, then it clearly emerges that the judge of rights and freedoms is the first judicial body to hear the respective defendant in the respective case, the prosecutor no longer having the obligation, as in the previous CPC, to listen the defendant until proposing a preventive arrest. This hypothesis would have been desirable as this message contains similar to the one in Art.209 para. (6) CPC: "Before the hearing, the criminal investigation body or the prosecutor is obliged to inform the suspect or defendant that he has the right to be assisted by a lawyer chosen or appointed ex officio and the right not to do any statement, with the exception of providing information regarding his identity, drawing his attention to the fact that what he declares may be used against him".

Furthermore, when we refer to procedural guarantees, we can also analyze the provisions of Article 374 paragraph (2) of the CPC: "The president explains to the defendant the nature of the accusation brought against him, informs the defendant of the right to make no statement, warning him that anything he says may be used against him, as well as the right to ask questions to co-defendants, the injured party, other parties, witnesses, experts, and to provide explanations throughout the judicial investigation when he deems it necessary." Here we encounter a new warning to the defendant regarding the right to remain silent and, of course, the consequences of any statements he may make in the case. It cannot be argued that the person is being heard now if he has not been heard until that moment, as the criminal investigation took place in his absence. The aforementioned legal text precedes Article 372, paragraph (1), which states: "At the court hearing, after calling the case and the parties, the president verifies the identity of the defendant", and is part of the texts that establish the initial stages of the trial, occurring from the first court hearing.

The close connection between the presumption of innocence and the right to remain silent of persons who evade criminal responsibility during the criminal prosecution phase is illustrated by the author Cristea Daniel who reported: "Criminal prosecution is a phase whose content and performance are strictly limited to achieving the goal and the norms of this phase, respectively of the criminal procedure and, in addition to ensuring the effective exercise of the powers of the judicial bodies, they seek to guarantee the rights of the parties and other participants in the criminal process so that the provisions of the Constitution, of the constituent treaties of the EU, of the other EU regulations in criminal procedural matters, as well as the pacts and treaties regarding fundamental human rights to which they are parties" [7, p.27]. "In addition to the fundamental rules of criminal procedure, several basic rules can be identified for this phase of criminal prosecution that enable certain categories of parties to take advantage and thus circumvent and confuse the application of the law. In this sense, even if the criminal investigation is not public, the authors, we are not referring to their capacity as accused/accused, have access to the documents and materials of the file, as a right conferred by law, which aim to avoid criminal liability. The author has quite clearly exposed the way in which the authors can evade, taking advantage of the legal framework (CPC RO), regarding the right to remain silent.

In Romania, the commission of fraud crimes through the accident method has also increased in recent years. In almost all cases, the "main" author is a prisoner, the place of the action being in one of the Romanian Penitentiaries. Accomplices to commit the acts are sent to various localities. In the localities in Romania, the fixed telephone network has the same no. by neighborhoods, differing only in the last 2 digits that identify the building and the place of the person who owns no. concerned. The accomplices at the time of the preparation of the crime are found in the neighborhood where the criminal activity is to be carried out.

How is the criminal activity prepared?

The person in the penitentiary has a mobile phone in the room where he is serving his sentence. He has the phone illegally. During the calling of the various telephone numbers, the persons who answer are approached psychologically in order to produce a strong emotion in order to obtain various amounts of money. During the conversation, the phone of the person in the penitentiary is connected to 2 other phones, respectively of 2 accomplices located in the neighborhood of the person on whom the crime is to be committed, who listen and intervene in discussions with the person in question.

How does the accomplice find out the address of the person on whom the crime is to be committed?

Due to the emotional state created, the person in prison explains to the person who is going to be the victim of the crime, to write a note that he will dictate over the phone, in which he will mention that he will willingly give the respective amount. At the time of drafting, the accomplices will hear the address of the person in question over the phone, at which point they move to the door of the building in order not to give the person time to figure it out and contact other people in order to find out the truth. When the accomplice arrives at the person's door, it is recommended that he is the one sent to pick up the amount of money and the ticket.

Example: On 01.10.2020, during the Covid-19 pandemic, a woman named MT reported to the police that on the same day, around 9:00 AM, she received a call on her landline while she was at home. The call was from an unknown number, and the caller was a man who identified himself as a police commissioner. He told her that her daughter, while in a store, had hit a young man who had stolen her phone. As a result of the hit, the young man fell, hit his head, and was taken to the hospital by ambulance. He was now in intensive care and unconscious. In the ensuing panic, the caller learned how much money MT had available and told her that the young man's parents had demanded 100,000 lei to avoid pressing charges. The supposed commissioner told MT that the case prosecutor agreed and that someone would come to her home to collect the money. Meanwhile, the caller asked MT to fill out a statement he dictated over the phone. Simultaneously, a woman rang MT's doorbell, introducing herself as the prosecutor's secretary, saying she was there to collect the money. She was invited inside, where MT told her she could take all the money on the table, amounting to 150,000 lei, but she had to promise that her daughter would avoid prison. The woman who came for the money promised that if MT gave the money, her daughter would not go to prison. She then took the money and the written statement from MT. After the woman left, MT, still emotional, called her daughter's phone number. Her daughter answered, revealing that MT had been deceived; the daughter was at home and had not been involved in any incident.

Following the report, the police obtained video footage from the entrance of MT's apartment building. Upon reviewing the footage, they observed a woman with her face covered by a protective mask, who was recognized by MT based on her features and clothing. It was also noted that she was talking on the phone as she entered the building.

The WGS coordinates of the crime scene were established. The police requested that the local Prosecutor's Office ask the judge for rights and liberties to obtain the call and communication records, as well as the identifying information of the phone numbers that had called MT's landline and from the WGS coordinates at the crime scene.

Upon obtaining the traffic and location data processed by public network providers, the police identified the number from which the call was made. The location was traced to one of the prisons in Romania, using a prepaid card solely for this crime, and they also identified the phone numbers called by the perpetrator.

After the crime was committed, all three perpetrators abandoned and disposed of the phones and numbers used during the crime.

Video footage from the crime scene area was also obtained, which helped identify a taxi driver. The woman, recognized by her clothing, was seen getting out of the taxi before the crime

was committed.

Following the hearing as a witness, the taxi driver stated that on that date he was contacted by phone by a female person whose marital status data he does not know, he picked her up from the area of a street he mentioned and moved her by taxi to the area where the crime was committed. She was talking on the phone throughout the route. An undercover investigator carried out checks and investigations in the area of the street from where the author was taken by taxi, after which he learned from another witness who also recorded a statement in this regard the civil status data of the author, thus becoming a witness concerned.

The victim identified the so-called perpetrator by facial features with 50% certainty during a photo lineup procedure as the person to whom she gave the money. The taxi driver recognized her with 60% certainty. There were no elements suggesting the need to designate the taxi driver as a threatened or vulnerable witness as defined by Articles 125 and 130 of the Romanian Criminal Procedure Code.

Following the approval, a search was conducted at the residence of the person who received the money. Bank deposits made on the same day were found, although not the entire amount, in the name of the sister of the perpetrator who was in prison. However, the clothing worn at the time of the crime was not found.

During the hearings, the person who collected the money from the victim did not wish to make any statement (right to silence) according to Article 83, letter (a) of the Romanian Criminal Procedure Code, and also requested a copy of the case documents.

What are the authors aiming for at the moment of identification? They aim to know the documents in the file to find ways to escape punishment.

In the Romanian Criminal Procedure Code, Article 94 concerns access to the case file, where paragraph (7) stipulates that "in preparation for the defense, the defendant's lawyer has the right to acquaint themselves with the entire material of the criminal investigation file in the procedures conducted before the judge of rights and freedoms regarding measures that deprive or restrict rights, in which they participate". Paragraph (5) states that the lawyer is obligated to maintain the confidentiality or secrecy of the data and documents they have become aware of during the consultation of the case file in the course of the criminal investigation, while paragraph (2) provides that consultation of the file includes the right to study its documents, the right to note data or information from the file, as well as to obtain photocopies at the client's expense".

In both the Romanian and Moldovan Codes of Criminal Procedure, it is expressly provided that only the lawyer is obliged to maintain the confidentiality or secrecy of the data and documents they have become aware of during the consultation of the case file. We are talking about the interference and the need to protect personal data in the case of disclosure of data obtained by the lawyer to the client as a result of consulting the materials in the case file.

In the CPC of Romania, Art.10 – "the right to defense", provides that the parties and the main procedural subjects have the right to defend themselves. And Art.66 paragraph (2) point (5) CPC of the RM provides for the right of the accused or the defendant to defend himself from the moment of being accused, in the cases allowed by law. Practitioners grant the suspect/accused/defendant according to these articles upon request the right to consult the documents in the case file or to photocopy them, but there is no obligation to keep the confidentiality or secrecy of the data and documents that he/she became aware of during the consultation of the file.

Before being arrested, the author consulted the file and obtained the data of the witnesses, the injured party and all the evidence in the file. We cannot call the presentation and disclosure of all evidence only the right to a fair trial. The 3rd accomplice received the information regarding the materials in the file during the prison visits. He had the role and influenced the taxi driver and the injured party by telling them that they are not 100% sure that the accused is the author and to go back on the statement, as the family knows for sure that the judicial police body forced the

note regarding the reconquest from the photo plate, thing which happened going back on what was declared and the key witness identified by the undercover investigator was also influenced and changed the statement. These disclosures have affected the application of the law, being an example in which the authors evade criminal liability" [8, p.27].

Conclusions and recommendations. In conclusion, the right to remain silent is essential to ensuring a fair and just criminal trial. It protects the accused person and contributes to the respect of fundamental rights in justice. In addition to this regulation, the right to remain silent also benefits the persons who commit the crime and who should be held criminally liable according to the act committed. In such conditions, practice demonstrates that the author's right to remain silent hinders the normal course of the criminal process, most of the time making it difficult to find out the truth and thus the normal course of the criminal process, especially when they do not have sufficient evidence against the author. This right of silence benefits the author.

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THE THEORETICAL AND PRACTICAL APPROACH TO THE EXECUTION OF THE LIQUIDATION SENTENCE OF THE LEGAL ENTITY

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Summary

The liquidation of the legal entity as a criminal sanction is a complex process, justified by socio-economic needs. The study of this institution was the subject of disputes that marked the criminal doctrine throughout the last century. The analysis of the typology of crimes committed in the last decades are aimed at protecting the norms in the field of the environment, public health, work safety, the financial, commercial, fiscal field. This determined the usefulness and necessity of the regulation in the modern criminal law of the harshest punishment towards the legal person.

The dissolution of the legal entity involves the occurrence of the consequences provided by the civil legislation, so that the interaction of the norms of criminal law with those of civil law is achieved with difficulty, paying attention to the purpose of the criminal law in general.

Keywords: legal person, criminal liability of the legal person, liquidation, dissolution, private law legal persons, public law legal persons.

Introduction. The economic development of the late 19th and early 20th centuries was the premise for the emergence of more and more legal entities, so that the risk of committing crimes by them increased considerably. As a consequence, the criminal liability of the legal person began to be regulated in legislation or jurisprudence. The common law system was the first who reintroduce, in the contemporary era, the criminal liability of the legal person [1, p.29]. This, becoming, over time, from a historical fiction, a reality regulated in modern Criminal Codes. Whether it is necessary or not, whether it is useful or not, this topic still involves many discussions in the specialized literature [2, p.653].

The study of the historical evolution of this institution is able to support the idea that the criminal liability of legal entity is not a reckless innovation of the last decades, but on the contrary, it is in perfect accordance with the fundamental principles of criminal law, with the nature of the legal person and is justified by the needs of socio-economic order [3, pp.81-84].

Proponents of the reality theory believe that it is possible to engage the criminal liability of the legal entity, or it is a legal reality, having its own will distinct from that of its members, with its own patrimony, having rights and obligations distinct from those of its members. Once the civil liability capacity of the legal entity was recognized, it was only one step until the criminal liability was also recognized [2, p.657].

The analysis of the criminal typology of the last decades shows a tendency to commit crimes directed against the social values of general interest of the community, such as: the environment, public health, work safety, the financial, commercial, fiscal field. This phenomenon highlighted the need for a doctrinal approach to the usefulness of holding the legal person criminally liable.

The realization of criminal law norms takes place through the voluntary compliance by the majority of individuals of criminal precepts. Thus, the importance of the enforcement of criminal law sanctions is determined by the achievement of the legal order both by compliance and by the coercion exercised against those who ignored the provisions of the criminal rules. If criminal liability is a consequence of the commission of a crime, then the sanction and its enforcement is the consequence of establishing criminal liability [4, p.81].

In modern criminal law, the Council of the European Union on June 19th, 1997 approved the second protocol drawn up under Article K.3 of the Treaty on the European Union to the Convention on the protection of the financial interests of the European Communities, by which it signaled to the Member States that the European Communities countries may be affected or threatened by acts committed in the name of legal entities and by acts involving money laundering and the conviction that these states had reached of the need to adapt, as the case may be – the national legislation, so that they provide for the criminal liability of legal entities for acts of fraud, corruption or money laundering, committed in their name, which harm or risk harming the financial interests of the European Communities. Thus, Art.3 of the mentioned normative act required the Member states to take the necessary measures so that legal entities are held criminally liable for the crimes of active corruption, fraud and money laundering. According to the cited regulation, the employment of criminal liability could occur under the conditions in which the crime is committed: a) in the name of the legal entity; b) by any person acting either individually or as a member of a body of the legal entity that has management attributions within it, on one of the following alternative bases: power of representation of the legal entity; the authority to make decisions on behalf of the legal entity; the authority to exercise control within the legal entity [5].

The subjects involved in ensuring the execution of the sentence with the liquidation of the legal entity. The state is the only active subject of criminal liability relations, having the monopoly of the right to punish. This is done through the bodies empowered with such powers. Criminal prosecution and trial of cases regarding crimes committed by legal entities are carried out according to the usual procedure, with some exceptions [6].

The execution of justice is an exclusive attribution of the courts. The state has assumed this exclusive right starting from the fact that it would be illusory if there were other participants in this relationship. The legal norms that enshrine this prerogative ensure a mechanism of imperativeness. Thus, justice is carried out in the name of the law only by the courts. The establishment of illegitimate courts is prohibited. No one can be declared guilty of committing a crime, as well as subject to a criminal penalty, except on the basis of the final decision of the court, adopted in accordance with the law. Sentences and other court decisions in criminal cases can only be verified by the courts according to the way their hierarchy is organized. Sentences and other court decisions of illegitimate courts have no legal force and cannot be enforced [6].

In the Criminal Code of the Republic of Moldova from 2002, for the first time, among the legal provisions, the possibility of holding a legal entity criminally liable was included, at least in contrast to the legal provisions of the criminal law of the Socialist Republic of Moldova from 1961.

The liquidation of the legal entity consists in its dissolution, with the occurrence of the consequences provided by the civil legislation. This being the most severe punishment, because it leads to the loss of the entity's legal personality, determining the impossibility of his existence as a subject of rights and obligations, and the termination of its capacity for use and exercise. The liquidation of the legal person is established if the court finds that the seriousness of the crime committed makes it impossible to keep such a legal person and prolong its activity [9].

The pre and post-liquidation stages, the consecutiveness of the actions taken by the subjects in the process of the legal entity liquidation. The dissolution of the legal entity is a complex and continuous process and is not equivalent to the immediate termination of the activity of the

legal entity. It continues to exist even after dissolution during the liquidation of the estate. However, from the moment of dissolution, the administrator can no longer undertake new operations.

After the conviction decision that ordered the liquidation of the legal entity has become final, the court transmits its decision to the competent court to take measures and continue the liquidation process, in accordance with civil laws. About the deletion of the legal entity from the State Register of Legal Entities, the competent person shall notify, within 5 days, the court that issued the conviction by which the liquidation of the enterprise was ordered [7].

The State Register of Legal Entities is the information resource that contains data on legal entities registered in the Republic of Moldova [8].

There are certain entities to which the law recognizes legal personality and which are exempted from criminal liability in consideration of the sovereignty attributions they exercise. According to Art.21 paragraph (4) from the Criminal Code of the Republic of Moldova, legal entities, with the exception of public authorities, are criminally liable for crimes for the commission of which a sanction is provided for legal entities in the Special Part of the Criminal Code [9].

The concept of a legal person can be found in Art. 171 of the Civil Code of the Republic of Moldova, as follows: «the legal person is the subject of law established under the law, having an independent organization and its own and distinct patrimony, affected by the achievement of a certain goal in accordance with the law, public order and good morals. Legal persons are of public law or private law, which in civil relations are situated on equal positions'' [10].

As far as legal entities under public law are concerned, in criminal doctrine it has been considered for a long time that they cannot be held criminally liable, both due to the fact that they ensure protection of general interests, and because it would be unacceptable for the state, which is the owner of the right to punish, to declare himself a criminal and to submit to his own repression. Over time, the criticism of the thesis of the criminal non-responsibility of the legal entity under public law intensified, claiming that there are no convincing arguments to justify why the state's liability admitted in other matters (civil), should not be admitted in criminal matter [2, pp.660-661].

The liquidation of the legal entity is a complex juridical-technical procedure that involves both institutions of criminal and criminal procedural law as well as civil and civil procedural law.

Legal entities under private law can be established freely only in one of the forms provided by the law [10]. From the reasons stated above for not admitting the criminal liability of legal entities under public law, in the present subject we will refer to the liquidation procedure of legal entities under private law in general and the procedure specific to certain categories of legal entities in particular.

From the date of publication in the «Official Gazette of the Republic of Moldova», the announcement regarding the liquidation of the company, the company name will be used with the words «in the process of liquidation» [12].

Legal personality is determined by the moment of issuing the administrative act in the form of a decision and, respectively, its registration in the State Register. Similar is the procedure for the deletion of the legal entity in which it is preceded by the adoption of the deletion decision from the State Register. The registrar will adopt the deletion decision within 3 working days from the date of receipt of the deletion request.

The legal status of the *Joint-Stock Company* is legal entity. The liquidation of the company is carried out by a liquidation committee or liquidator, to whom all the powers of management of the current activity of the company pass. Pursuant to the final and irrevocable decision of the court and after the deletion of the company from the State Register of Legal Entities, the National Financial Market Commission deletes movable values of the respective company from the Register of Securities Issuers, and the Central Depository/Registrar closes the accounts in its registers

[11].

In the case of the liquidation of the limited liability company, the liquidator or administrator is obliged to transmit to the state archive, in accordance with the law, the documents of the company prior to its deletion from the State Register of Legal Entities [13].

The provisions of state registration of legal entities and individual entrepreneurs, is also appled to non-commercial organizations [14].

Therefore, the competent body for their deletion is also the State Register of Legal Entities. The procedure for the liquidation of the *non-commercial organization* by court order, can also take place at the request of the Ministry of Justice, if the activity of the organization is contrary to the interests of national security, public safety, the defense of order or the necessity to prevent crimes, to protect health, the moral rights and freedoms of others. This measure is necessary in a democratic society, as well as it is provided by Art. 11 paragraph (6) of the Law No.86 of 11.06.2020 on non-commercial organizations. The examination of the application for forced liquidation is under the jurisdiction of the Chisinau Court.

Trade Unions are associations made up on voluntary principles of persons united by common interests, including those related to their activity, and established for the purpose of defending the collective and individual professional, economic, labor and social rights and interests of their members. The primary trade union organization, the territorial branch trade union center, the territorial inter-branch trade union center, the branch national trade union center and the inter-branch national trade union center obtain the status of a legal person from the moment of their registration with the Public Services Agency in accordance with Law No.1129/2000 of the trade unions and with the Law No.220/2007 regarding the State Registration of Legal Entities and Individual Entrepreneurs. Their liquidation is assimilated to the liquidation procedure of these entities [15].

With reference to the legal status of *Political Parties*, they are voluntary associations with the status of a legal entity [16].

The Ministry of Justice will submit an action to the court requesting the dissolution of the Political Party if there is a basis for ex-officio deletion from the State Register of Legal Entities. In the case of the dissolution of the Political Party by court decision, the Ministry of Justice will request the Public Services Agency to note in the State Register of Legal Entities the initiation of the liquidation procedure of the respective political party. For the liquidation of a Political Party, the Ministry of Justice, in order to execute the final decision of the court, will create a committee for the liquidation of the Party. The liquidators are obliged to continue the ongoing operations, to execute the creditors' claims, and if the available funds are insufficient to pay all the debts, they are entitled to sell the assets of the Political Party. For damages caused by their fault, the liquidators are liable both to the Political Party in liquidation process and to third parties. The existence of a Political Party ceases only after the completion of the liquidation procedure and the deletion of the Party from the State Register of Legal Entities [16].

The religious cult represents a religious structure, with the status of a legal entity, which carries out its activity on the territory of the Republic of Moldova according to doctrinal, canonical, moral, disciplinary norms and its own historical and cult traditions, which do not contravene the legislation in force, being constituted by persons subject to the jurisdiction of the Republic of Moldova who manifest their religious beliefs in common, respecting established traditions, rites and ceremonies [17].

The grounds for the termination of the activity of religious cults and their component parts can serve the judgment of the court, in case the religious cults or their component parts carry out serious actions or repeatedly unfold actions provided by Art. 24 paragraph (2) of the registered law, or does not comply with the previous court decision suspending the activity of religious cults

or their component parts. The Ministry of Justice has the right to act in court for the termination of the activity of religious cults or their component parts, with the presentation of conclusive evidence regarding their guilt. Therefore, the legal-civil liquidation mechanism takes place through the Ministry of Justice [17].

The *Commercial Bank* has the status of a legal entity. Its activity consists in attracting deposits or other repayable funds from the public and granting loans on its own account. In order to carry out its activity in the Republic of Moldova, each bank must have a license issued by the National Bank of Moldova, which is also the authority that withdraws the license and initiates the liquidation process [18].

The liquidation procedure is carried out also by the National Bank of Moldova. The liquidation of the bank on grounds other than insolvency does not prevent the initiation of the forced liquidation process based on insolvency if during the liquidation process it is found that the bank has become insolvent. With the withdrawal of the license and the initiation of the forced liquidation process of the bank, the National Bank appoints a liquidator. His duties are: a) sell, with the written permission of the National Bank, the bank in insolvency process as a unique patrimonial complex to another bank (buying bank), b) organize the sale and/or partial transfer of the bank's assets and the partial transfer of the bank's obligations to other banks; c) liquidate the bank's assets under the law [19].

Conclusions. The institution of the execution of the liquidation sentence of the legal entity represents a complex and long-lasting technical-legal procedure. The interaction of the rules of criminal law and criminal procedure with those of civil law and civil procedure is inevitable. For these reasons, the mechanism is realized with difficulties. The punishment is directed against the existence of the legal entity in particular, but the procedure itself is directed against its patrimony or activity with the capitalization through liquidation of its patrimony in general.

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JURISDICTION OF THE PROSECUTION AUTHORITY: THEORETICAL ASPECTS AND LEGAL PROVISIONS

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Summary

In this article, we have proposed to address the essence of jurisdiction as one of the most important institutions that ensure the legality and proper organization of the criminal process with the elucidation of the meaning of this legal category, its particularities, signs, and forms of manifestation and explaining the procedure for its application in practice.

Not only did we aim to elucidate the essence and legal nature of jurisdiction from the perspective of its content, signs, and forms of manifestation, as well as its importance for the validity of the criminal process, but we also elucidated aspects related to the procedure and algorithm of interpretation of the signs of jurisdiction when establishing the jurisdiction of a specific prosecution body in the investigation of criminal cases and the subjects entitled to supervise the observance of the rules of jurisdiction and their application.

Keywords: prosecuting authority, initiation of criminal proceedings, prosecution, jurisdiction of the prosecuting authority, signs of jurisdiction, forms of jurisdiction, procedural subjects.

Introduction. Following the changes in Moldovan society after the 1990s, especially with the adoption of the Constitution of the Republic of Moldova [1], which declared the rights and freedoms of the individual to be supreme values, the work of the state authorities has been organized and oriented towards ensuring and respecting these values. The fight against crime plays a central role in the system of measures to ensure legality and the rule of law. And this is natural: crime – a social-dangerous attack on personal rights and freedoms, legitimate rights of society and the state. It causes much greater damage to citizens, state and public organizations, and, in general, to the normal development of social relations than other offenses. The increase in the level of danger and the number of offenses is raising the level of alarm not only among the population but also among politicians at various levels. In this connection, the work of identifying, detecting, combating, and counteracting crimes, and applying the measures laid down by law about the guilty parties, is the object of increased attention for all branches of state power [28, p.3].

In the fight against crime and therefore in the protection of citizens' rights and freedoms, an important role is played by the prosecution authorities, whose aim is to „protect the person, society and the state from crime, and to protect the person and society from illegal acts of persons with responsibility in their work related to the investigation of alleged or committed crimes, so that any person who has committed a crime is punished according to his guilt and no innocent person is held criminally responsible and convicted" [2].

Given the variety of prosecution bodies empowered with the right to initiate and investigate criminal cases against harmful acts, it causes some difficulties in determining the concrete prosecution body that is to react to the commission of a crime and to undertake its investigation. Determining which prosecuting body is entitled to investigate a specific harmful act is done by

interpreting and applying the rules of *the institution of jurisdiction*.

Jurisdiction, as an institution of criminal procedural law, is one of the basic conditions of the criminal process which ensures respect for the fundamental rights and freedoms of the participants in the criminal process, leads to an increase in the quality of the criminal process by ensuring the multilateral, complete, objective and narrow investigation of criminal cases regardless of their quality and complexity and consequently to avoid duplication of prosecution actions and procedural bureaucracy.

Importance of the subject matter it is determined by the fact that the rules of the institution of jurisdiction are an important link in the realization of the rules of substantive and procedural law. This institution of law is closely related to the organization and legal conduct of criminal proceedings and is based on the strict division of the functional powers of the prosecuting authorities in the investigation of specific criminal offenses.

Analyzing the legislation in force before the rules governing jurisdiction, we find that several problems and issues are ambiguous or have not been resolved. However, the legislator has always intended to resolve them by making changes to this institution, introducing new regulations to increase, reduce, or modify the competence of the prosecution bodies, whose number is constantly changing.

There is no uniform position in legal theory, besides the fact that there are few detailed approaches to this issue, discussions continue on the nature of this legal category, the signs and circumstances that determine it, and the forms of jurisdiction. There is no single position regarding the procedure for establishing and applying the rules on jurisdiction and the subjects entitled to this right. It is not sufficient to approach the institution of jurisdiction in the context and from the perspective of its interaction with other institutions of criminal procedural law. Which, in our opinion, is an unquestionable argument on the importance of the subject addressed.

Methods and materials applied. Traditional research methods are used in the research content: grammatical, systemic, logical, analysis and synthesis, deduction and induction, observation and comparison.

Discussions and results obtained. As indicated in the introductory part of this study, in the process of combating crime, a special role is played by the judiciary, which has several powers deriving primarily from the provisions of the of Criminal Procedure Code (hereinafter CPC) and other special laws containing procedural rules [18, p.60]. In the hierarchy of judicial bodies, the most important contribution to the fight against crime is made by the prosecution authorities, whose work is largely aimed at gathering evidence of the preparation, attempt, or commission of the crime and at detecting and apprehending the offender. To achieve this aim, the prosecution authorities are obliged to carry out all acts of prosecution in such a way that the case is fully investigated. To this end, they shall establish and verify the circumstances which confirm the charge and those which are such as to remove or mitigate the charge. The prosecuting authorities establish the form of guilt, the aggravating or mitigating circumstances, the circumstances which caused and facilitated the offense, and its consequences [19, p.126].

Therefore, the prosecuting authority is empowered by the State to carry out, in the pretrial phase, activities related to the gathering of the necessary evidence regarding the existence of the criminal element, the identification of the perpetrator or perpetrators, and the establishment of their liability. Also, the prosecution bodies are obliged to take all measures provided by law to investigate in all aspects, completely and objectively the circumstances of the criminal case to establish the truth [14, p.52].

The diversity of the prosecution bodies that have been established and are active on the territory of the Republic of Moldova [2], and the variety of functional tasks with which they have been delegated, have conditioned some difficulties in their performance. To delimit the tasks of

the prosecution bodies, a certain criterion is needed to show what activities each of them performs. One such criterion is *competence* [11, p.368].

Therefore, the judicial body must have the *competence* to carry out criminal prosecution actions and criminal cases which are particularly diversified by the seriousness of the facts, the place where they were committed, or the person of the perpetrator, must be assigned to a fair assessment by the prosecution bodies [15, p.11].

Jurisdiction is therefore of particular importance in criminal proceedings as the scope of each body's powers is delimited to the specific acts of each phase of the criminal proceedings.

Thus, due to the nature and seriousness of the offenses, the places where they were committed or where the perpetrators were caught, as well as the quality of the perpetrators, the powers of the judicial bodies are delimited, ensuring a rational allocation of criminal cases to the prosecution bodies and the courts of different levels, to resolve them in the best conditions. At the same time, this delimitation of powers prevents interference by some bodies in the sphere of activity of others [16, p.101].

In the theory of criminal procedure, the notion of jurisdiction is used in two senses: 1) as a procedural-criminal category that refers to the general conditions for carrying out the preliminary investigation; 2) as a procedural-criminal institution [25, p.13].

The fact that the CPC contains a multitude of rules regulating issues of jurisdiction (Art.36, Art.39, Art.40, Art.41, Art.42, Art.45, Art.258, Art.266, Art.267, Art.268, Art.269,

Art.269^1, Art.269^2, Art.269^3, Art.270, Art.270, Art.270^1, Art.270^2, Art.271, Art.273 of the CPC), is a further argument as to the distinct character of this institution of criminal procedural law.

The rules of this institution lay down the powers of prosecution bodies, the conditions, grounds, and order of withdrawal and transfer of criminal cases from one prosecution body to another, the resolution of possible conflicts of jurisdiction, and the consequences that may arise from violations of the rules on jurisdiction.

Although the rules of the institution of jurisdiction regulate the legal relationships that arise only at the beginning of the criminal proceedings, i.e., during the criminal proceedings, there are numerous situations where issues related to the assessment of jurisdiction need to be resolved even at the beginning of the criminal proceedings and sometimes even before the beginning of the criminal proceedings, at the stage of the acts of discovery.

The rules of *the institution of jurisdiction* regulate the legal relationships that arise between the subjects of the proceedings in the course of criminal procedural activity. The subjects of these legal relationships can only be certain persons with a responsible function and state bodies. Therefore, the rules of the institution of jurisdiction are realized only through the performance of these responsible persons and state authorities [33, p.67].

However, identifying *jurisdiction* as an independent institution of criminal procedural law and revealing some general moments, related to its realization, are certainly important only because they represent the first stage in the analysis of this procedural category. This situation can be explained by the fact that such an approach can reveal only the external characteristics of jurisdiction – the ways of expressing and regulating it in the criminal procedural law, but does not reveal the essence of this legal category, the signs, and rules, without which it is impossible to establish the laws of functioning and existence of this institution and the ways of rationalization and application in practice [25, p.31].

As indicated above, *jurisdiction* is an institution of criminal procedural law, however, in the legal literature the notion of *jurisdiction* is not approached from the perspective of the legal relationships that arise in connection with the investigation of specific criminal cases, but from the perspective of the particularities of these criminal cases, depending on which the law assigns them to the jurisdiction of one or another preliminary investigation body or fact-finding body [27, p.9].

The situation is further complicated by the fact that the legislation in force does not propose a definition of *jurisdiction*, which is why numerous definitions have been given in the literature, which generally contains the same elements [18, p.60]. In this sense, some authors [13, p.68] conceive jurisdiction as the objective capacity of a judicial body (including the person who is part of that body) to validly perform acts with legal effectiveness in the conduct of criminal proceedings. Conceived in the positive sense, objective capacity (competence) appears as an empowerment given to the judicial body to perform procedural or procedural acts, and in the negative sense, objective capacity appears as a limitation that distinguishes the spheres of powers of each body [16, p.100].

Thus, I. Neagu defines *jurisdiction as* "the scope of the duties that each category of the judicial body has to perform, according to the law, in the criminal process" [12, p.210]. N. Volonciu speaks of "the capacity of a body to deal with a particular criminal case" [23, p.126] and V. Rămureanu regards it as "the extent to which a judicial body exercises its right to resolve conflicts of law" [20, p.33].

Other authors approach *jurisdiction* in two senses: either as a right and an obligation of a judicial body to carry out a procedural activity in a particular criminal case or as an appropriateness of the criminal case to be prosecuted or tried by a particular body [16, p.101].

As can be noticed, some Romanian researchers approach *jurisdiction* from the perspective of the criminal cases solved, and others, concerning the processual and procedural acts that can be carried out by judicial bodies. We can say, therefore, that the determination of the jurisdiction of a judicial body is carried out both regarding the criminal cases that are the responsibility of the judicial bodies and concerning the procedural acts and measures that can be carried out by these bodies [18, p.61].

A similar situation is found among Russian researchers who, unlike the Romanians, in their vast majority, link *jurisdiction* to the specifics, the signs, and the criminal case itself, under which criminal cases are assigned to a specific prosecution body.

Thus, M.A. Kovalev defines the jurisdiction as the peculiarities of the criminal case by which its investigation is to be carried out by a certain preliminary investigation or fact-finding body from among those indicated in the law [38, p.315]. The author I.A. Antonov, prefers to use the notion of signs of the criminal case as: "... the totality of the signs of the criminal case established by the law according to which it is attributed to the competence of one or another body of preliminary investigation or ascertainment" [39, p.269], under which conditions N.E. Pavlov [40, p.307-308] approaches jurisdiction from the perspective of the signs of the offense and the powers of the investigating officer.

Whatever the researchers may think, in revealing the essence of this category, we must take as a starting point the purpose of this procedural institution, which essentially represents one of the instruments with which the legislator establishes the powers of the prosecution body to investigate a certain harmful act in a criminal case. The rules of jurisdiction organize and discipline the judicial mechanism and at the same time establish its limits on other state authorities, and the importance of this institution lies in the fact that a criminal case cannot be resolved randomly by any judicial body in the course of carrying out the act of justice, requiring the existence of criteria with the help of which the judicial body that a particular criminal case is determined [8, p.220].

As can be deduced from the assessments made above, the vast majority of Romanian researchers describe jurisdiction from the perspective of the functional attributions of the prosecution bodies, while Russian researchers focus on the particularities, the signs of criminal cases, depending on which they are assigned to the jurisdiction of one or another prosecution body. In our opinion, neither approach is complete enough to provide an understanding of this concept. It is not correct that the notion of *jurisdiction* is linked neither to the circumstances/particular

features/signs of the criminal case, but also to those of the harmful act committed, nor to the functional powers of the prosecuting authorities, the prosecuting officer, let alone to identify or overlap them.

As indicated above, jurisdiction is first and foremost an institution of criminal procedural law, which regulates certain judicial relationships, whereas the signs, the particularities of the criminal case, of the harmful act have nothing to do with the law and are rather objective elements, which in certain situations may determine *jurisdiction*. There are not a few cases in which the characteristics of the criminal case, the signs of the offense, remain unchanged and the legislator intervenes and, by making changes, decides to reassign jurisdiction to another prosecution body. For example, in the past, particularly and exceptionally serious offenses committed by minors fell within the jurisdiction of the public prosecutor and, following the amendments made by Law No. 83 of 14.04.2023 [4], were transferred to the jurisdiction of the prosecution body of the Ministry of the Interior.

It is therefore correct to say that *jurisdiction* is determined based on the particulars of the criminal case, the signs of the harmful act, but not identified with them. The totality of the characteristics of the criminal case, the signs of the offense, constitutes the factual basis based on which the legislator determines the prosecuting body which is called upon to investigate it.

Moreover, the criminal procedure law operates with the notion of *jurisdiction* concerning criminal cases only in cases where it regulates aspects of the jurisdiction of the courts (Art.41-Art.46 of the CPC) [2], and not in the case of criminal prosecution bodies when it prefers to link this legal category to the crime itself (Art.253; Art.257; Art.258 para. (1) and para. (2); Art.262; Art. 266-272 of the CPC) [2].

It is important to note that, in most cases, the signs of the criminal case are the same signs of the crime. As an example, I.L. Petruhin speaks of such signs of the criminal case as the *gravity of the crime committed, the place where it was committed, the person who committed it*, and the *person about whom the harmful act was committed* [34, p.38]. V.M. Kornukov, among the basic elements of the criminal case determining jurisdiction, indicates, firstly, the *type of the committed crime*, determined by the object of the criminal act, secondly, the *place of the commission of the crime*, and thirdly, the *subject of the crime* [32, p.26].

Based on these findings, could we say that *the signs of the criminal case* are *the signs of the crime* and ultimately *the signs of jurisdiction*? We think not, because by *sign we mean* the outward manifestation of a phenomenon that allows us to assume or specify its nature [10].

Given that neither the legislation in force nor the literature provides a precise definition of what constitutes the signs of a criminal case, and given that researchers' approaches show that they coincide to a large extent with the signs of the crime, and given that the criminal case itself is the material expression of the process of investigating the crime, we risk assuming that the signs of the criminal case are the signs of the crime.

In another order of ideas, the criminal case may present many more characteristic signs than the crime itself, therefore we consider it appropriate to work not with the *signs of the criminal case*, to avoid confusion that may arise, but with the *particulars, the circumstances of the criminal case*.

The circumstances that characterize a criminal case and that can influence jurisdiction are more diverse than the signs (elements) of the crime. For example, the place where the crime was committed is a mandatory sign of the crime, but the criminal case can also be characterized by the place where the crime was committed or the place where the suspect, the accused, or most of the witnesses are located (Article 257(1) of the CPC) [2], which in certain circumstances can be decisive in determining the jurisdiction of the prosecuting authority.

Therefore, the jurisdiction of the prosecuting authority is based on and may be determined

by: the nature of the harmful act committed; the qualification of the offense according to the Special Part of the Criminal Code (hereinafter CC); the signs of the offense; the particularities of the criminal case; certain objective circumstances, provided that these are expressly set out in the legislation in force.

We also disagree with approaches in which the content of jurisdiction is reduced to the powers, the ability of the prosecuting body to investigate a particular criminal case, because these are far too restrictive approaches, as the content of this legal category includes only the functional powers of the prosecuting body, so that the meaning of this concept is reduced and equated with *functional competence*, which in our opinion is unacceptable, or this concept is much broader. We believe that the meaning of the notion of *jurisdiction* is closely linked to its forms.

There is no single position in the literature, some authors operate with the notion of *forms of competence* others of *signs of competence* [33, p.34].

Thus, Romanian researchers [7, p.107], [21, p.629-634], [22, p.654], [24, p.275], [18, p.61], but also Moldovan researchers [9, p.523], use such notions as *forms, modalities of jurisdiction* and indicate the following varieties: *functional jurisdiction*; *material jurisdiction; personal jurisdiction; territorial jurisdiction; special jurisdiction; exceptional jurisdiction, and* Russian scientists, in addition to the notion of *forms of jurisdiction* [39, p.269], [35, p.176], [29, p.81], also operate with the notion of *signs of jurisdiction* [36, p.82], [26, p.183].

We believe that both notions can be used, under certain circumstances and with some clarifications. The use of the notion of *forms of jurisdiction* may create the false impression that the jurisdiction of the prosecuting authority can take several forms, as this category is unique. By using the concept of *signs of jurisdiction*, confusion can also be created, or, as we have shown above, *jurisdiction*, in essence, implies the assignment of the criminal case to a particular prosecution body for investigation, what importance do the signs of this category have? *The signs of jurisdiction* are rather objective elements that can determine the attribution of jurisdiction to a prosecuting body, but in no case the essence of this legal category.

Moreover, we draw attention to the fact that it is not always the signs, the particularities of the criminal case, of the offense that determine the jurisdiction of the prosecuting body. There are many situations in which the attribution of jurisdiction does not originate from any objective circumstances and represents the discretion of the subject who directs the prosecution, i.e. the prosecutor. Certainly, critics will say that even in cases where the prosecutor decides to change the jurisdiction of the prosecution body, it must be based on an assessment of objective data, and only to ensure the purpose of criminal proceedings as enshrined in Article 1 para.(2) of the CPC, however, it should be noted that the objective data to which the prosecutor may refer are much more diverse than the objective data characterizing the harmful act or the criminal case, and sometimes the attribution of jurisdiction may be strictly subjective, originating only from the prosecutor's perception of the appropriateness of achieving the purpose of the criminal proceedings.

Thus, according to the provisions of Article 271 para.(7) of the CPC, „the General Prosecutor and his deputies may order, using a reasoned order, the conduct of criminal proceedings by any prosecution body by the provisions of this Code" [2]. From the content of this rule, it is not clear what are those reasons (objective circumstances), that allow the General Prosecutor to adopt such a decision. Given the context addressed, we risk assuming that the decision is also motivated by the need to ensure the prosecution is complete, objective, in all respects, and on reasonable terms. However, given that the legislator has not expressly provided for the reasons that may lead to the adoption of such a decision, we consider that they may be very diverse.

Another issue that needs to be addressed in this study is the procedure, the algorithm for establishing jurisdiction, and the subjects of the proceedings entitled to do so.

Unfortunately, the criminal procedure law does not contain rules that would regulate this

procedure, not even tangentially, which causes many difficulties in establishing and assessing jurisdiction in practice. Even scientific researchers choose more on the essence of this legal category than on the algorithm of interpretation and application of the rules of the institution of jurisdiction. The idea is that jurisdiction is established by cumulative and concomitant assessment of all signs: *material, territorial, and personal* [33, p.13]. However, in practice, not all signs can be applied concurrently, as many of them are not only concurrent, but can be mutually exclusive.

In our opinion, from the assessment of the provisions of the CPC on jurisdiction, several rules for establishing jurisdiction can be deduced, which consist of the concurrent application of two signs: *material* and *territorial*. The application of these two signs constitutes the first, and often the only, stage in the assessment of jurisdiction, by which applying, it is decided which prosecution body should investigate a particular criminal case.

Based on the qualification of the harmful act, the *material jurisdiction* of the prosecution body shall be determined, and depending on the place where the harmful act was committed, the place where it was discovered, or the place of residence of the suspect, the accused or the majority of witnesses, which territorial subdivision of the body having material jurisdiction shall directly conduct the prosecution in a specific criminal case. These two signs are usually more than sufficient to determine which prosecution authority is to receive the criminal case under its management.

However, there are other signs to be taken into account when determining and assessing the competence of the prosecution body, as an exception to the above rule, which complements it or why not exclude and replace it.

In certain situations, the legislator attaches particular importance to the quality of the subject of the offense. Quality is determined by the position held, the profession exercised or the functional duties delegated. For example, according to Article 270 para.(1) of the CPC, „The public prosecutor shall prosecute in cases of crimes committed by: a) the President of the country; b) deputies; c) members of the Government; d) judges; e) prosecutors; f) the director, deputy director of the Intelligence and Security Service and intelligence and security officers; g) criminal prosecution officers, police officers and investigation officers, in connection with the exercise of their official duties, except corruption and corruption-related offenses; i) employees of the National Anti-Corruption Centre, in connection with the exercise of their official duties..." [2].

There are also situations in which the quality of the victim is also decisive in determining jurisdiction. Thus, according to Article 270(2) of the CPC, „The prosecutor shall also prosecute in the case of attempts on the lives of police officers, criminal investigation officers, intelligence and security officers, prosecutors, judges if the attempt is related to the performance of their duties, as well as on the lives of their family members" [2].

As can be seen, the application of *the personal mark* of jurisdiction leads to the "cancellation" *of the material mark*, just as the qualification of the offense loses all importance in determining the jurisdiction of the prosecuting authority. However, it should be borne in mind that the legislator, when determining *personal jurisdiction*, may decide to make it conditional on other objective signs or circumstances, such as the harmful act (attempt on the lives of police officers, judges, etc.), the exercise of official duties, the commission of the offense in a particular territory, etc.

Based on the provisions of the legislation in force, we found that the application of *the personal sign* does not always lead to the exclusion or cancellation of *the material sign*. At least in theory, these signs can be applied together to determine jurisdiction. In such situations, the personal quality of the perpetrator or the victim may be relevant only to the extent that a specific crime has been committed. In our opinion, such a situation is found in Article 270(2) of the CPC, where the legislator has linked the special quality of the victim to the commission of attempts on their life in connection with the performance of their duties [2]. A similar situation is found in Article 270^2

para.(1) and para.(2) of the CPC, which states that „the Anticorruption Prosecutor's Office shall prosecute the offenses referred to in Articles 324-335[1] of the Criminal Code No. 985/2002, if they were committed by: a) the President of the country; b) deputies; c) members of the Government; d) judges; e) prosecutors; f) employees of the Intelligence and Security Service; g) employees of the National Anti-Corruption Centre; h) leaders and members of the governing bodies of the public authorities and institutions provided for in the Constitution of the Republic of Moldova and the offenses referred to in Article 324 and Article 325, if they were committed about the respective subjects". We could therefore discuss a *mixed material-personal sign*.

Other objective circumstances cancel out *the* value of *the material sign*. Thus, there are several offenses, including offenses against justice (Art. 311-316; Art. 323 of the Criminal Code), but also money laundering offenses (Art. 243 of the Criminal Code) and terrorist financing offenses (Art. 279 of the Criminal Code) [3], which do not have a clearly defined jurisdiction. Prosecution of such offenses will be carried out by the same prosecuting body that has established the offenses and is competent to investigate the offense about which the prosecution has been initiated. Thus, the legislator has established the joint material jurisdiction of the prosecution bodies, because in these cases there are circumstances that do not adversely affect the full and objective conduct of the criminal prosecution and investigation [17, p. 207].

Russian researchers call this form of jurisdiction – *alternative jurisdiction* [41, p.244], [42, p.252] and consider situations when on the same category of offenses, depending on certain circumstances, the preliminary investigation may be carried out by several prosecution bodies.

Given that this type of jurisdiction is characterized by the existence of objective links between the offense under investigation and the offense about which it is being investigated, it is more appropriate to call this type, this variety of jurisdiction *accessory* (from the Latin acessorius – additional). This type of jurisdiction also has a paradoxical character in that, in this specific case, *the material sign* (qualification of the offense) gives the criminal case an accessory character, while the latter cancels the validity of *the material sign* [30, p.113-125].

As we will see below, jurisdiction is not always determined by the signs of the crime, the objective circumstances in which the crime was committed, or why not by the particularities/ characteristics of the criminal cases, as indicated above, there are situations in which the legislator decided to give the superior prosecutor and the General Prosecutor the right to decide the jurisdiction of the prosecution body. This ability granted to the prosecutor, in the literature has been established as a distinct form of jurisdiction, called – *discretionary* [31, p.655].

In our opinion, the ability of the prosecutor to decide on the competence of the prosecution bodies is not a form of competence, but represents an expression of the functional powers with which he has been delegated by the power of the law, or in other words a manifestation of will in the application of the rules of the institution of competence, which is expressed by assigning this right to a prosecution authority, which formally, in the circumstances, is not competent to conduct the prosecution itself.

The ability of the prosecutor to decide on the jurisdiction of the prosecution body was established as a measure to compensate for the shortcomings of the existing legislation, which does not seem to cover all the situations that may arise in practice. The following situations are considered here: a) situations in which, based on the factual circumstances and by interpreting the rules of jurisdiction, it is not possible to determine which prosecution authority is competent to prosecute a specific case, and b) situations in which the competent prosecution body, determined by assessing the objective signs in the light of the legal provisions, is not able to ensure a timely, complete, objective and thorough investigation of the criminal case.

It should be noted that, previously, by the power of the rule of Article 270 paragraph (9) of the CPC, even the prosecutor leading the prosecution had an *exclusive right* to assume the prose-

cution in any criminal case in which he was leading the prosecution, a situation which in practice allowed the prosecutor to arbitrarily assume the investigation of any criminal case to the detriment of the competent prosecution body. The situation was rectified by the amendments made to the CPC by Law No.83 of 14.04.2023 [4].

In spite of the findings made, it is not clear at what stage of the criminal proceedings the issues of jurisdiction are to be resolved.

The competence of the prosecution body characterizes its activity during the prosecution. Therefore, the question of determining the prosecution body entitled to investigate a specific criminal case arises for the first time when the prosecution is initiated, and the basis for assessing jurisdiction is the order initiating the prosecution, in which the representatives of the prosecution body briefly describe the harmful act in terms of the elements of the alleged offense and determine the qualification, by indicating the specific rule of the Criminal Code. This follows from the systemic interpretation of the provisions of point 23 of the Instruction on the procedure for receiving, registering, recording, and examining referrals and other information about offenses approved by Order No.121/254/286-0/95 of 18.07.2008, which states that "The prosecution body referred in the manner provided for in Article 262 of the Criminal Code is obliged to verify its jurisdiction. If the prosecution body finds that it is not competent to carry out the criminal prosecution, it shall immediately, but not later than 3 days, refer the case to the prosecutor in charge of the criminal prosecution to forward it to the competent body" [6].

In another vein, interpreting the provisions of the first paragraph of point 23 of the same instruction in the context of the provisions of Article 271 paragraph (2^1) of the CPC, which states that „If the prosecuting authority finds that it is not competent to examine the report on the preparation or commission of a criminal offense, it shall immediately, but not later than 3 days, send the report together with the accumulated materials to the prosecutor for transmission to the competent authority", we conclude that the rules on jurisdiction apply, including before the start of criminal proceedings, at the stage of registration of the report, i.e. from the moment of the start of criminal proceedings.

Therefore, throughout the criminal proceedings, the prosecuting body is obliged to verify its jurisdiction by identifying and assessing the signs of jurisdiction and, where appropriate, to decline jurisdiction in favor of the competent prosecuting body. However, in practice, the signs of jurisdiction must be established by certain procedural acts, from the date of issuance of which is to be calculated 3 days for declining jurisdiction imposed by the provisions of Article 271 paragraphs (2) and (2^1) of the CPC.

If *the territorial mark* of jurisdiction can be established during the on-the-spot investigation, through the statements of witnesses, the injured party, or by examining various records, then *the personal mark* will always be established only through official documents and answers received from the companies, organizations, institutions in which the person concerned works.

Given the place and role of *the material mark* in establishing jurisdiction, we consider that it can only be established by the acts of disposition of the prosecuting authority and the prosecutor, such as the order to initiate criminal proceedings, the order of admission as a suspect, and the order of indictment, since they describe the harmful act and provide its qualification, depending on the evidence administered at that stage.

The legislator, when establishing the rules of jurisdiction, also indicated the subjects who can influence its determination [33, p.165]. According to A.V. Seliutin, "The distinctive features of the delegations regulated by the rules of this institution are that the subjects of these legal relationships can only be certain responsible persons and state bodies. The rules of this institution are realized by the actions of these responsible persons and organs in certain circumstances: 1) in connection with the resolution of questions related to the initiation of criminal prosecution and

the conduct of preliminary investigation or refusal in the initiation of criminal prosecution depending on whether sufficient objective data on the existence of the crime or its preparation have been accumulated; 2) in connection with the necessity of determining the appropriate bodies and persons with a function of responsibility called upon to conduct preliminary investigation in the case of the initiated criminal case; 3) in connection with the resolution of conflicts arising between these subjects in connection with jurisdiction" [37, p.49].

According to the national legislation, the subjects entitled to determine the jurisdiction of the prosecution body are the prosecution officers, the heads of the prosecution body, the investigating prosecutors and judges in so far as they examine, according to Article 313 of the CPC, the appeals against the actions of the prosecution body in applying the rules of jurisdiction.

The prosecution officer, being the main subject empowered with the right to carry out criminal prosecution on behalf and in favor of the prosecution body, directly establishes and interprets the signs of jurisdiction through the norms and rules imposed by the provisions of the CPC. Thus, if the prosecution officer determines that the criminal case does not fall within the jurisdiction of the prosecution body he represents, he proposes the transfer of the criminal case for prosecution under the jurisdiction of another prosecution body [2].

The head of the prosecution body, at the initial stage of the criminal proceedings, ensures the registration of referrals and other information relating to offenses. He is responsible for the full registration and recording of referrals and other information relating to offenses, the veracity and objectivity of the initial record [6] i.e. coordinates the work of criminal prosecution officers and provides methodical assistance in the conduct of criminal prosecutions, contributes to obtaining the necessary data and materials, takes measures for the timely execution of the tasks of criminal prosecution officers in carrying out special investigative measures [2]. Therefore, the head of the prosecution service, upon receiving the referral of a specific offense for assignment, is obliged to assess the competence of the prosecution body and then forward the referral with the attached materials to the competent prosecution service.

It is not clear how the head of the prosecution authority will decline jurisdiction in favor of the competent body and what the procedure is for forwarding the referral and the materials of the criminal proceedings to that body.

Given that the legislation in force does not expressly regulate this situation, it could be considered that the head of the prosecution body sends the criminal case by correspondence to the chief prosecutor, who in turn forwards it to the competent prosecution body.

In our opinion, the referral with attached materials should be sent directly to the head of the competent prosecution body as the prosecutor only conducts prosecutions in criminal cases and not in criminal trials.

At the same time, given that a prosecuting body declines jurisdiction in favor of another body, we consider that it is not sufficient for this to be done by simple correspondence. The legal basis for such an action must be the reasoned order of the head of the prosecuting authority.

This fact also results from the interpretation of the rule of Article 255 paragraph (1) of the CPC, which states that "In the course of criminal proceedings, the criminal prosecution organ, by order, shall order procedural actions or measures under the conditions of this Code. Each of the procedural actions or measures ordered by the prosecuting authority must be justified separately" [2].

The prosecutor is the central figure in the application of the rules of jurisdiction as he or she conducts and exercises the criminal prosecution and represents the prosecution in court; organizes, directs, and controls the work of the prosecution bodies in the criminal proceedings; carries out, including ex officio, the control of compliance with the legislation on the registration of reports on the commission or preparation of crimes; examines requests and petitions according to the competence [5].

Therefore, the role of the prosecutor in ensuring the rules of jurisdiction derives from the functional powers with which he has been entrusted. Thus, according to Article 52 para.(1) of the CPC, "In criminal proceedings, the public prosecutor, within the limits of his material and territorial competence: shall initiate the criminal prosecution, ordering by a reasoned order either to conduct the criminal prosecution by other criminal prosecution bodies or to conduct the criminal prosecution directly by the provisions of this Code, or shall refuse to initiate the criminal prosecution, or shall order the termination of the criminal prosecution; shall conduct the criminal prosecution directly, taking over the powers of the criminal prosecution body; shall personally conduct the criminal prosecution and control the legality of the procedural actions carried out by the criminal prosecution body, shall decide to exclude from the file the evidence obtained by Art. 94 para.(1); permanently controls the execution of the procedure of receiving and registering the reports of criminal offenses; requests from the prosecution body, for control, criminal files, documents, procedural acts, materials, and other data regarding the criminal offenses committed and the persons identified in the criminal cases in which it exercises control and orders the connection or, where appropriate, the dissolution of the case if this is necessary" [2].

So, by verifying the legality of the receipt and registration of complaints about offenses, the prosecutor also verifies their jurisdiction, by verifying the legality of the prosecution's actions and the quality of the evidence, the prosecutor also verifies the application of the rules on jurisdiction and, if he finds that they are not respected, he intervenes to redress the situation by canceling or restoring the prosecution's actions, formulating indications to complete the prosecution or withdrawing and transferring the criminal case from one prosecution body to another.

Based on the proposed approaches, we can conclude that: a) the prosecutor directly applies the rules of jurisdiction; b) supervises compliance by the prosecution bodies; c) resolves conflicts that may arise between prosecution bodies regarding the interpretation and application of the rules of jurisdiction.

Given that the prosecutor leads the prosecution, checks its quality, and can influence it by giving directions and assisting or carrying out prosecution actions directly, we consider that he is primarily responsible for applying the rules on jurisdiction.

The prosecutor can therefore intervene throughout the prosecution to verify, assess, and decline the jurisdiction of the prosecution body he is leading.

However, in practice, the prosecutor assesses jurisdiction only at the stages at which he or she is in direct contact with the criminal case, i.e., at the initiation of the prosecution, when the prosecuting authority is required, within 24 hours of the issuance of the order to initiate the prosecution, to communicate it and to submit the materials of the criminal case to the prosecutor [2]. If the public prosecutor finds that the prosecution body he is ,"curing" is not competent to prosecute the criminal case in question, he shall, using a reasoned order, refer it to the competent prosecution body, in the order of Article 271 paragraph (2) of the CPC.

The next stage of evaluation and assessment of jurisdiction is at the time of issuing the indictment, as at this stage the prosecutor evaluates in advance all the evidence accumulated based on which he formulates the indictment and submits the state charge to the person responsible, charging him with a particular component of an offense in the Special Part of the Criminal Code.

Finally, the prosecutor evaluates and assesses the competence of the prosecution body when he receives the criminal case from the prosecution body with the proposal to terminate the prosecution. This fact results from the content of Article 290 of the CPC, which states that "the prosecutor shall, within 15 days from the receipt of the file sent by the prosecution body, verify the materials of the file and the procedural actions carried out, and decide on them..." [2].

Conclusions. Having made our findings on jurisdiction from the perspective of existing legal regulations and theoretical approaches in the literature from Romania, the Republic of Moldo-

va, and the Russian Federation, we can conclude concerning the following relevant aspects:

– At the moment there is no single position on the content of these legal categories. From the plurality of existing opinions, we can deduce that jurisdiction is approached in two ways: a) as an institution of criminal procedural law; and b) as one of the general conditions of the criminal process;

– Jurisdiction is an institution of criminal procedural law guaranteeing the legality of the criminal process, the rules of which regulate the legal relations that arise between certain state authorities and responsible persons, about the determination of the prosecution body empowered to investigate a specific offense through the prosecution of criminal cases, the transfer of the criminal case from one prosecution body to another, the resolution of conflicts of jurisdiction, depending on certain signs, peculiarities or objective circumstances characterizing the harmful act, the criminal case or other circumstances;

– Even though jurisdiction is an institution of criminal procedural law, in the literature the approach is limited to the assignment of criminal cases to the prosecution bodies depending on the signs of the criminal act, the criminal case, and the actual powers of the respective prosecution body. In determining the essence of this legal category, it must be inferred from the cooperative approach to the purpose of the criminal proceedings, the functional powers of the prosecuting authorities and the particularities of criminal cases, the signs of the offense or other objective circumstances, in some cases also subjective (the prosecutor's decision);

– It is not correct to operate with the notion of the *signs of the criminal case*, because these represent the signs of the crime and cannot be equated. We consider it appropriate to use the notion of *signs of the crime and features/ particularities of the criminal case*. There is a relationship between these two concepts, which is one of part and whole, just as the particulars of the criminal case also include the signs of the harmful act because the criminal case itself is the material expression of the process of investigating such an act. At the same time, we consider that there may be other objective circumstances that may influence jurisdiction, circumstances that do not necessarily characterize the criminal case (the discovery of the crime by a certain prosecution body, an appropriate level of preparation of a certain prosecution body, which in certain circumstances may provide a more complete and objective performance of a certain criminal case, the prosecutor's decision, etc.). It is therefore correct to speak of certain objective circumstances that determine the jurisdiction of the prosecuting body. These objective circumstances take into account both the signs of the harmful act, the specifics of the criminal case, and other objective circumstances;

– We believe that it is not correct to operate with the notion of *forms, modalities, and kinds of competence*, because it creates the false impression that competence can take many forms when in fact it is a single category. It is much more appropriate to work with the notion of *signs of jurisdiction* since it underlies the objective particularity that determines the jurisdiction of one or other prosecution bodies;

– There are several objective circumstances (signs) that may determine the competence of the prosecution body to investigate a particular harmful act, provided that they are expressly regulated by the legislation in force. However, we consider that there are two main signs of jurisdiction: *the material sign* and *the territorial sign*, which in most cases are sufficient to establish the jurisdiction of the prosecuting authority and an exceptional sign: *the personal sign*, which cancels out *the material sign* and sometimes the *territorial sign* and can unilaterally determine the jurisdiction of the prosecuting authority. In some cases *the personal sign* complements and is applied in tandem with *the material sign*, which is why it could be considered as a subcategory of the *material sign* or it could be a *mixed material-personal sign*. In our opinion, the other *signs*, except the *territorial* and *personal sign*, are subcategories of the *material sign* and we do not consider it

necessary to consecrate them as separate signs or forms;

– The competence of the prosecution body is determined by the successive application of the *material mark*, to determine the body competent to investigate a specific harmful act, and then *the territorial mark* to determine the territorial subdivision of the respective prosecution body, empowered to investigate this specific case;

– The rules for establishing jurisdiction apply not only at the prosecution stage but throughout the criminal proceedings. That is to say, from the moment the referral of the offense is registered in the Register of Offences (Register No 1). If the prosecuting officer who has received the referral of the offense for investigation, made in the order provided for in Article 262 of the CPC, or, as the case may be, the head of the prosecuting body, finds that he is not competent to prosecute the offenses referred to him, he shall, within three days of the registration of the referral in Register No. 1, in the order provided for in Article 271(2)[1] of the CPC, in a reasoned order, decline jurisdiction in favor of the competent prosecuting body. The legislation in force does not regulate the order of resolution of conflicts of jurisdiction in the event of declining jurisdiction when examining complaints about offenses. In these situations, we consider that, by assimilation with criminal cases, the provisions of Article 271(3) of the CPC should be applied;

– The assessment of jurisdiction can be made at any stage of the criminal proceedings and as a priority at the time of the start of the criminal proceedings; the recognition of the person as a suspect, the recognition of the person as an accused, and finally at the end of the criminal proceedings, by assessing the circumstances and objective data that have been established by that time. The signs of jurisdiction and the objective data determining jurisdiction are to be determined in the course of the prosecution and reflected in the procedural documents drawn up by the representatives of the prosecution bodies, from the date of their issue, the three-day period for declining jurisdiction is to be calculated;

– The subjects with the right to assess jurisdiction are the prosecution officer, the head of the prosecution body that has been seized of the offense, or who is conducting the prosecution in a specific case, and the central figure is the prosecutor in charge of the prosecution since it is the prosecutor's task to supervise and control the prosecution work carried out by the prosecution body and to ensure the legality of the criminal proceedings and therefore also compliance with the rules of jurisdiction.

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INTERLOCUTORY DECISION: PRACTICAL APPROACH

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Summary

The present study is dedicated to the analysis of an effective legal instrument in countering abuses (potential, current or future) by law enforcement bodies - the interlocutory decision. The concrete examples from the national judicial practice, accompanied by the presentation of the consequences through which the dispositions of the courts are materialized, demonstrate the viability, usefulness and effectiveness of this legal instrument and will encourage the justice actors to adopt and comply with the interlocutory court rulings. Thus, the interlocutory decision is sometimes presented as the only and last way to bring awareness and put an end to the violation of legality and human rights by state bodies.

Keywords: interlocutory decision, abuse, violation of legality, human rights, jurisprudence.

Introduction. In the jurisprudence of the Republic of Moldova, the practice of issuing interlocutory decisions by the courts is not widespread.

Therefore, regardless of the location, the degree of jurisdiction and length of service[1] of the judge, the possibilities of removing the conditions that contributed to the commission of crimes and other violations of the law are constantly neglected.

The reasons for the omission to adopt and pronounce interlocutory decisions are varied: ignorance of the normative provisions, insufficiency of scientific studies, uneven judicial practice in the aspect of cassation / maintaining interlocutory decisions, disappointment in the effectiveness of this legal instrument, contempt from the participants in the judicial process and from the people who are guilty of violating legality and human rights, unprofessionalism, etc.

The circumstantial analysis of the application practice and the effects produced after the issuance of interlocutory decisions is able to demonstrate the particular importance of this measure applied by the jurisdictional bodies.

Methods and materials applied. In the present study were widely used following methods: analysis, synthesis, logical method, literary interpretation method, and survey. The materials used are limited to the relevant normative acts, scientific publications, but also to the materials of concrete criminal cases.

Discussions and results obtained. In accordance with Art. 218 para. (1) Criminal Procedure Code: "The Court, finding in the court process violations of legality and human rights, once with the adoption of the decision, issues an interlocutory decision by which these facts are brought to the attention of the respective bodies, responsible persons and to the prosecutor" [7]. According to Art. 450 para. (2) Contravention Code, finding in the court proceedings facts of violation of legality and human rights, the court issues, once with the decision, an interlocutory decision, by which these facts are brought to the attention of the responsible person [6].

[1] Note: In the carried out survey, it has been proven that some magistrates with more than 30 years of experience as judges declare that they have never issued interlocutory decisions.

Recently [28], the institution of "interlocutory decision" was specifically regulated[2] by other legal norms: Art.445, para. (1[1]) Civil Procedure Code; Art.248, para. (2) Administrative Code.

From the legal point of view, the adoption of an interlocutory decision in cases of establishment the facts of violations of legality and human rights constitutes an imperative obligation, but not a discretionary right of the court (except for the court of recourse in the above-mentioned cases).

Through the interlocutory decision, the court can react to: the illegal actions of some people who contributed to the commission of the crime, the illegal actions committed by the criminal investigation bodies, the bodies that exercise the special activity of investigations and the prosecutor during the criminal investigation, illegal actions of citizens or persons with a responsible function, illegal actions committed by people participating in the trial during the examination of the case, acts issued by ministries, departments and other public authorities (except for those which are subject to constitutionality control) [8[1], p. 377-378].

In one case, during the examination of the contravention case brought to the appeal by B.I. against the report regarding the contravention of November 12, 2019, and the decision of the investigating agent C.V. from the same date, the court identified violations of legality and human rights, among which:

a.) Covering up the fact that the act could be placed under the criminal law. In this case, the information – the attack and stabbing of an unknown person in the street – is registered in CRR-1 (in accordance with Interdepartmental Order No. 121/254/286-0/95 of 18.07.2008 regarding the records of crimes, of criminal cases and persons who have committed crimes) and is examined under the aspect of the existence or non-existence of the crime;

b.) Inadequate documentation of the contraventional/ criminal act (incorrect indication of the place where the act was committed and the place of preparation of the report regarding the contravention; omission to specify the residence and occupation of the person, etc.);

c.) Omission to resolve, in accordance with the relevant normative framework, the state of belongings that have the potential to be recognized as physical evidence in a contravention/ criminal case. In the case, in the report regarding the contravention, the physical evidence was not individualized, with the indication of the owner's data and, as the case may be, the measures taken for their preservation (Art. 443, para. (4) Contravention Code). Or, through the report of the on-site investigation of 29.09.2019, an important instrument of committing the crime – the pocket knife – was picked up, which was not included in the report regarding the contravention of 12.11.2019 and, in generally, it is not clear the state of this potential physical evidence and the extent to which it influenced the establishment of the person's liability [25].

Regarding the erroneous qualification of the acts that are from the very start under the criminal law, it is certified that this circumstance *per se* violates the principle of legality and human rights, attracting a whole series of subsequent violations: making it difficult to find the truth in the criminal investigation, the expiration the prescription of criminal liability, inappropriate exercise of the victim's right to compensation, etc. [16].

In another case, the court found violations of legality and human rights, among which: a) inadequate and superficial documentation of the contravention; b) detention for examination of the case that shows signs that may place the act under the criminal law; c) admitting the violation of procedural rules by the investigating agent [24].

Among the flagrant violations admitted by the investigating officer when documenting this contravention case, the court notes the following (in descending order of the seriousness of the

[2] Note: the interlocutory decision is adopted at the discretion of the court of recourse if the appealed decision is arbitrary or is decisively based on an obviously unreasonable assessment of the evidence. In this case, the interlocutory conclusion is sent to the judicial inspection.

violation):

1) Investigating agent M.A. unfoundedly rectified the date of drawing up a series of procedural documents: the report of receipt of the complaint dated 07.02.2022, the report regarding the documents of ascertainment dated 07.02.2022 and others. As it follows from J.E.'s statements, and the fact is confirmed by the evident signs of correction in the content of the prepared documents, the receipt of J.E.'s complaint, the hearing of J.E. and of J.M. took place on 03.02.2022. Therefore, the modification of the date of documents by the investigating agent raises reasonable doubts in the field of evidence falsification in the contravention process by a public person. Moreover, the rectification of the date of drawing up the notification documents also led to the late registration of the contravention (Report R-2 No. 0349 dated 08.02.2022)

2) The summons issued by the investigating agent M.A. was drawn up in violation of the form conditions provided by Art. 237 Criminal Procedure Code (in particular, the procedural quality of the cited person was not indicated and the subject of the case was not indicated). At the same time, the place of presentation of the person was wrongly indicated. The appellant declared to the court that he was present at the date, time and place of the summons, but the investigating officer was not present at the place where the appellant was summoned, nor was he available to answer the telephone calls made to the indicated mobile phone in the content of the summons. Not only that, but also the fact that, in the content of the summons, the person is notified that he is to be heard and immediately a report will be drawn up regarding the contravention, constitutes from the beginning a circumstance of violation of the presumption of innocence and the right to defense. However, the investigating agent is not able to ascertain, until the hearing of the person, the veracity of his depositions and the new circumstances that are yet to be ascertained;

3) The investigating agent issued 2 sanctioning decisions on the same case, thus violating the *non bis in idem* principle, also specified in Art.22 of the Criminal Procedure Code. Thus, by the Sanctioning Decision of 07.03.2022, included in the report regarding the contravention, and by the Sanctioning Decision of 09.03.2022, M.Al. was sanctioned 2 times for committing the same contravention;

4) It remains inexplicable that the investigating agent M.A., who represents the Police, did not pick up the clothes with sings of blood that M.Al. pointed to, did not attach the expert report to the materials of the contravention case, although he offered the directory order in this regard to M.Al., did not register the case of violation of the legislation in force in the manner and within the period established by the normative and subnormative acts and, in the conditions that the act would present indications that place it under the criminal law, did not remit urgently the case to the criminal investigation body for the undertaking of all emergency measures to establish the presence or absence of the constituent elements of any crime [24].

In a number of cases, the violations of legality and human rights was conditioned to the delay in the examination of the contravention case of which is guilty the investigating officer.

For example, in the interlocutory decision [27] it was shown that: "*Beginning with the day 01.09.2020 and until 23.08.2021, i.e. a period of almost a year, the investigating agent M.A., without taking into account the reduced limitation period in contraventional cases (art. 30, par. (2) Contraventional Code), as well as the reasonable term for examining the contraventional case (art. 381, par. (2) Contraventional Code), did nothing but send summonses to the address of D.V. The court notes that the number of summonses [15; 16; 17; 18; 19; 20; 21; 22] and their dates [24.09.2020; 24.10.2020; 25.11.2020; 25.12.2020; 25.02.2021; 25.04. 2021; 25.06.2021; 17.08.2021] raises well-founded doubts regarding the veracity of the documents collected during the contravention process. However, the investigating body does not send summons to a single recipient during a year. No less dubious is the situation where the investigating agent did not receive any proof of receipt of the summons and did not proceed to other methods of notifying the person - notification with notice*

of receipt, forced bringing of the person, identifying the circumstances if the person is in the territory of the locality, if he has a permanent job, etc. In turn, the person D.V. immediately received the summons from the court [Summon no. 29825 of 01.11.2021 and the Notice of Reception of 10.11.2021] and appeared before the court at the appointed day. In the context of the above mentioned, it should also be highlighted that the report regarding the contravention were drawn up on 23.08.2021 and submitted to the court on 27.10.2021, which a priori makes it impossible for the court to sanction the person for committing of a deed on 24.08.2020 due to the expiration of the prescription of criminal liability".

The content of another interlocutory decision [26] reflects the situation in which, during the establishment of the circumstances, an unjustified delay of the reasonable term for examining the case was admitted. Thus, the entire spectrum of actions at the stage of investigations concerned the time interval 01.12.2021-29.12.2021. After 29.12.2021, the investigating agent did not take any action until immediately on 07.11.2022, when the report regarding the contravention was drawn up. Consequently, the court certifies an unjustified delay of the reasonable term for examining the case, or, starting from 29.12.2021 and until 07.11.2022, *i.e.* a period of 11 months and 9 days, the investigating agent G.V., without takes into account the limited period of examination in contraventional cases, as well as the reasonable term for examining the contraventional case, did not take any action on the contraventional case.

In the criminal case accusing C.I. of committing the offense provided for by art. 186, par. (1) Criminal Code, the court identified acts of violation of legality, namely: the return of seized objects, with potential probative value, recognized as a physical evidence, without issuing the corresponding procedural act and without obtaining the prior consent of the prosecutor who leads the criminal investigation [19].

In this case, it was noted that, by the Ordinance of the criminal investigation body of 29.11.2021, it was recognized as a physical evidence: the mobile phone taken from C.A. on 29.11.2021. The receipt dated 29.11.2021 certifies the reception by C.A., from the criminal investigation officer L.B., of the mobile phone. The court notes that, according to art. 161, par. (1) Criminal Procedure Code, until the resolution of the criminal case, the prosecutor or the criminal investigation officer who has the consent of the prosecutor, during the criminal investigation phase, or, as the case may be, the court orders the restitution to the owner or the legal possessor: of the objects necessary for everyday life. It is noted that the restitution of the object was carried out by the criminal investigation body and was not conditioned, so that from C.A. there was no obligation to keep the physical evidence intact until the case was solved by the prosecutor or the court. In the materials of the criminal case, the physical evidence thus recognized by the Ordinance of 29.11.2021 was not detected, nor was the place of its storage identified, which conditioned the non-examination of the specified physical evidence directly by the court. Neither in the Indictment of 04.07.2022, nor in the List of evidence of the prosecution side, nor in the Letter accompanying the criminal file of 21.07.2022 was the existence of any physical evidence established, and the prosecutor's reference to the Ordinance of 29.11.2021 as a physical evidence is completely wrong. Finally, among other materials of the criminal case, the official act of restitution of the described physical evidence was not identified [19].

In the criminal case accusing M.I. of committing the offense provided for by Art. 201^1, para. (1) let. a) Criminal Code [22], the Court has established the fact of the violation of legality and human rights, among which: neglecting the legal term for maintaining the person as a suspect (Art. 63 para. (2) point 3) Criminal Procedure Code); ignoring the obligation of removing the suspected person from under investigation or to put him under accusation within the term provided by law (Art. 63 para. (3) Criminal Procedure Code); violation of the person's right not to be prosecuted several times (Art.22 Criminal Procedure Code; Art.4 para. 7 of the Convention for the Defense of

Human Rights and Fundamental Freedoms No. 1950 of 04.11.1950 (hereinafter, ECHR)).

The court established that the time period between the recognition of M.I. as a suspect (Ordinance of recognition as a suspect of 19.12.2019) and that of accused (Ordinance of recognition as accused of 05.04.2021) in the commission of the crime of family violence exceeds the term of 3 months. *In concreto*, the term expired on 18.03.2020, respectively, it is exceeded for a period of *1 year and 17 days*. Not only that, but in this case, the starting the criminal investigation Ordinance of 11.12.2019, is equivalent to an order to recognize him as a suspect, in the sense of Art. 63, para. (1), point 3) Criminal Procedure Code, respectively, the initiation of criminal prosecution *in personam* has the value of an accusation in criminal matters. So, if the subsequent *dies ad quem* – 18.03.2020 (the starting point being the Ordinance of recognition as a suspect of 19.12.2019) was neglected, *a fortiori* the previous *dies ad quem* – 10.03.2022 (the starting point being the starting the criminal investigation Ordinance of 11.12.2019) was neglected, too.

In another case from judicial practice [20], during the examination of the case of accusation of B.I. and C.R. of committing the offense provided for by Art.27, and Art.42, para. (2), related to Art. 248 para. (5) let. b), d) Criminal Code, violations of legality and human rights have been identified, in the circumstances established by court Sentence No. 1-307/2020 of 13.12.2022, among which:

The change of accusation in the sense of aggravation by the *Ordinances of the criminal investigation body of 30.06.2017* constituted *de jure* the submission of a new accusation against the person/ persons, which considerably expands the limits of the accusation in the indictment, being carried out by neglecting the provisions of Art. 53 para. (1) point 3), 5), and Art. 326 para. (2) Criminal Procedure Code (the findings were presented in the Decision of the Court of Appeal Balti No. 1a-879/18 of 20.11.2020). Next, on 28.06.2021, the state prosecutor abandoned the new accusation brought according to the Ordinances of 30.06.2017, verbally, being neglected the prescriptions of the law provided imperatively in Art. 320 para. (5) Criminal Procedure Code, according to which the prosecutor's renunciation of accusation is made by written ordinance. Through the Ordinances modifying the accusation in the court of 14.04.2022, a deficient accusation was submitted, contrary to the provisions of Art. 66 para. (2) and Art. 281, par. (2) Criminal Procedure Code, but also Art. 6 § 3, let. a) ECHR. Thus, in the indictment acts, it was omitted to indicate the place where the act was committed (starting with the place of loading the goods and ending with the concrete address of the detention of the perpetrators). In the specified indictments, the total amount of the damage caused was not indicated, although this qualifier everywhere carries a special relevance within the smuggling crime. The factual circumstances clearly contradict the qualification, but also the qualifying signs of the described crime composition. So, while the persons were accused by Art.27, and Art. 248 para. (5), let. b) and d) Criminal Code, for attempting to cross the customs border of the Republic of Moldova of goods, objects and other values by not declaring them in the customs documents, by several persons, in big proportions, *de jure* the persons were additionally accused of the fact that "*between August 2015 and January 2016, B.I. and C.R, acting out of direct intent, by common agreement and prior understanding with two persons regarding whom the case was dismissed in a separate procedure, but also other persons not established by the criminal prosecution body, especially from the authorities responsible for state border crossing control, smuggled across the customs border of the Republic of Moldova to the Ukraine approximately 10-15 trucks model "Mercedes 407D" and "Mercedes 409D", loaded with non-ferrous metal waste, scrap and waste used batteries, which they did not declare*", without retaining the accusation on this impeach. The legal qualification of the defendant's deeds does not refer fully to their deeds as they were described in the indictment act. However, starting from the date of the act's commission on 29.01.2016 and up to now, the criminal norm from Art. 248 Criminal Code underwent 5 legislative changes. The procedural acts confirming the searches of October 13 and 14, 2015, were

drawn up in violation of the provisions of Art. 263 para. (2), point 2), para. (3) and (5) Criminal Procedure Code, which should be properly applied including by the investigating body. *In concreto*, the reports do not contain data regarding the function, name and surname of the person who drew them up, the name of the authority they represent, nor is the latter person's signature certified; at the same time, in the report of 14.10.2015, the individualization (listing and detailed description) of the lifted objects was not carried out. These violations, on the one hand, determine the inadmissibility of the evidence through the prism of Art. 94 Criminal Procedure Code, and, on the other hand, conditions an increased risk of violation of the legislation on the part of the representatives of the legal bodies of the state [20].

Omission to sign the Ordinance regarding the disposition of creation of a group of several criminal investigation officers (which conditioned the nullity of all the evidence accumulated by the non-authorized criminal investigation officer) [21], the failure to obtain the prosecutor's consent to the return of the physical evidence (which made it impossible to examine and evaluate the evidence by the court) [23], the failure to draw up an arrest report, to ensure the assistance of a lawyer and to present the person before an investigating judge (which determined that all the procedural acts carried out during the criminal investigation to be declared null) [14], non-compliance with the principle of loyalty in the administration of evidence and finding out the truth [17], the omission of ordering and carrying out a medico-legal expertise to establish the degree of gravity and the nature of the injuries to body integrity of the victim [18], the non-execution of Court Decisions regarding the satisfaction of the convict's requests (in particular to have meetings with close relatives, the private notary, as well as for restricting access to the assistance of an independent doctor) [15], are just some of the examples of violations of legality and human rights referred through the interlocutory decisions.

Not only that, but also the actions of judges in the administration of justice can be the subject of an interlocutory decision. Thus, according to the interlocutory Decision of the Chisinau Court of Appeal of July 7, 2017, adopted in the criminal case against B.A. of committing the offense provided for by Art.171 para. (3) let. a) and b) Criminal Code, it was found that judge S.A. admitted the request [to extend the preventive arrest measure] without being convinced that the defense party had prior access to all the materials presented by the criminal investigation body, in the absence of the legal summons of the accused, making reference in the text of the issued judicial act to the non-existent materials and lack of research, thereby infringing on the rights of the accused [12].

In accordance with the regulations of the Art.218, par. (2) Criminal Procedure Code: "within a maximum of one month, the court will be informed about the results of the settlement of the facts exposed in the interlocutory decision" [7]. According to the Art.450, para. (3) Contravention Code, within 30 days, the responsible person notified according to para.(1) and (2) inform the court or the investigating agent about the measures taken by it [6].

As it follows from the cited legal norms, the measures to be taken by the persons in charge of the public institution to which the employee who admitted the reported violations is a member are not expressly provided.

As a result of the adoption of the interlocutory decisions exemplified above, the following consequences were produced:

– By the decision of the court [13], upheld by the hierarchically superior court [11], the report regarding the contravention of November 12, 2019, drawn up regarding B.I., on the qualifying signs of the composition of the contravention provided for in Art. 78 para. (2) Contravention Code, was declared null, and the contravention case filed on 29.09.2019, was referred without delay to the Briceni District Prosecutor's Office, for taking a decision in accordance with Art. 274 Criminal Procedure Code;

– By the court sentence [29], upheld by the hierarchically superior court [10], the criminal

case filed in the criminal case concerning the accusation of M.I. of committing the offense provided for by Art. 201[1] para. (1) let. a) Criminal Code, it was terminated, due to the fact that there are other circumstances that exclude or condition the initiation of criminal prosecution and his criminal liability. In this case, the cumulative and seriousness of the detected violations conditioned the initiation of a disciplinary case regarding the leading prosecutor of the criminal investigation, D.V.;

– Despite the fact that the reasonings of the court regarding the violations admitted by the criminal investigation body, indicated in the interlocutory decision, were fully reflected in the final sentence [30], by the decision of the court of appeal [9] exclusively the interlocutory decision was canceled, „since it is not based on legal provisions and [...] does not refer to the violation of the rights of individuals or the limitation of any constitutional rights";

– Based on the decision of the Disciplinary Board [12], the disciplinary procedure filed against the judge of the Hincesti Court, Headquarters of Ialoveni, S.A., based on the self-referral of the Judicial Inspection of July 27, 2017, was terminated, on the grounds that no disciplinary offense was committed;

– Based on the Response of the Briceni District Prosecutor's Office No. 367m-19/2954 of 07.10.2021, as a result of becoming aware of the circumstances found by the court during the examination of the criminal case accusing the named B.D. and I.I. in the commission of the offense provided for by Art. 362, para. (1) of the Criminal Code, on 17.08.2021, a service investigation was carried out regarding the senior criminal investigation officer of the Criminal Investigation Section of Police Inspectorate of Briceni, L.S., according to which, for the disciplinary violations found in the examination of criminal case No. 2019070367, manifested by the failure to carry out the criminal investigation actions necessary for the investigation in all aspects, complete and objective of the circumstances of the case, in order to establish the truth in the case in question, which inevitably diminishes the image of the criminal investigation body, affecting the right of the parties to a fair trial, the last was strictly warned for not admitting such violations in the future. At the same time, during the operational activity meeting of the prosecutors of the Briceni District Prosecutor's Office, the violations found by the court during the examination of the criminal case were discussed by the prosecutors in order to intensify the control when the criminal prosecution officers carry out criminal prosecution actions in accordance with criminal procedural legislation [5];

– Based on the Excerpt from the report No. 72 of 15.12.2022 of the operational meeting of the Briceni District Prosecutor's Office: „during the operational meeting, the Decision of the Edinet Court, Briceni Headquarters, from 14.12.2022, in the criminal case concerning the accusation of the defendant C.I. in committing the offense provided for by Art. 186 para. (1) Criminal Code, was discussed, and the attention was paid to the omissions admitted by the criminal investigation body in the procedure for the restitution of physical evidence. The prosecutors took note against the signature of this judicial act and were alerted to the facts reflected in it, as well as to the need to take measures in order to avoid such situations in the future" [3];

– According to the Response of the Edinet Police Inspectorate No. 34/35-11040 of 09.12.2022, as a result of the examination of the Court Decision of 13.10.2022, issued in the criminal case against B.M. of committing the offense provided for by art. 186, par. (2), let. c) and d) Criminal Code, regarding the responsible person Ș.I., employee of Police Sector No. 3 (Hincauti) of the Edinet Police Inspectorate, a service investigation was initiated, in order to examine in all aspects, completely and objectively, the circumstances of the disciplinary violations, based on point 47, ch. VII of Government Decision of Republic of Moldova No. 409 of 07.06.2017 „on the approval of the disciplinary status of the servant with special status within the MIA". According to the Information Letter No. 34/35-478 of 19.01.2023, for the observed violations of the police employee Ș.I. it was reduced from the monthly performance bonus, with the amount set at 8% in the second quarter of 2023" [4];

– Violation of the applicant's right to freedom and security, guaranteed by art. 5 § 1 of the ECHR, recognized by the interlocutory decision of the Chisinau Court of Appeal of April 5, 2005 [2, §§ 14, 39], but also non-compliance with the obligation to offer effective protection against bad treatments, guaranteed by the art. 3 of the ECHR, recognized by the interlocutory decision of the Central Court, Chisinau municipality, of 16.04.2004 [1, §§ 26, 50, 52], helped the European Court of Human Rights to establish the important circumstances and correct solution of cases of the violated rights of the applicants.

However, unfortunately, disregarding the provisions of Art.120 of the Constitution [8], according to which it is mandatory to comply with the final decisions of the courts, a considerable number of the interlocutory decisions adopted were left unenforced, and to the requests for additional information from the responsible legal bodies did not bring any response or reaction.

Conclusions and recommendations. As a result of the carried out research, we consider the institution of „interlocutory decision" to be extremely effective and we encourage the responsible persons to fulfill their legal obligations both in terms of issuing interlocutory decisions and also in undertaking measures aimed at preventing the repetition of reported violations.

Therefore, the consequences of adopting an interlocutory decision vary from the simple fact of bringing to the knowledge of subordinates, to sanctioning the responsible employee (from a warning to dismissal) and remedying the violation of human rights.

Finally, the improvement of the normative framework that regulates the interlocutory decision is welcome, with the inclusion of concrete measures to be undertaken by the responsible persons of the body that admitted the violation of legality and human rights, but also of the consequences in case of failure to undertake these measures.

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PARTICULARS IDENTIFIED IN THE INVESTIGATION OF THE OBJECTIVE SIDE OF THE CRIME PROVIDED FOR IN ARTICLE 200 PARAGRAPH (1) OF THE ROMANIA CRIMINAL CODE

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Summary

This article presents a scientific report on the particularities identified in the investigation of the objective side of the offense provided by Article 200 paragraph (1) of the Criminal Code of Romania. According to the author, the institution of protecting life and implicitly the newborn child through the lens of human rights is regulated both internationally in its general form and nationally in particular forms. In this sense, the main objective of the criminal rules of all states that regulate the beginning of the right to life, human rights and a fair trial is to achieve adequate legal-penal measures to protect life. These principles constitute the foundation of all authentic democracies that influence the life of the person and implicitly the life of the child from birth.

Keywords: murder, newborn, mother, author, harmful actions, legal protection.

Introduction. The body of the newborn child constitutes the object of the offense provided by Art. 200 paragraph (1) of the Criminal Code of Romania, on which the mother commits actions causing death, immediately after birth but no later than 24 hours. It should be seen as a totality of organic functions and processes that keep any person alive. The use of the notion of killing the newborn refers to the commission of the murder crime committed against the product of human conception at the physiological term of birth, which, in the understanding of medical sciences, is related to pregnancy duration of 9 calendar months or 280 days. It is carried out after the natural birth process has started, which can only take place up to 24 hours after birth.

Methods and materials applied. The research undertaken is based on the study of the doctrine, legislation and judicial practice in Romania existing in the given field. In order to achieve the proposed goal and the scored objectives, a number of scientific research methods were used which aimed to reveal the origin, the essence and the identification of the characteristics of the objective side of the crime provided by Article 200 paragraph (1) of the Criminal Code of Romania from the perspective of incrimination the harmful action. To carry out the research, the following methods were used: logic, induction and deduction, all of which are based on the study of the doctrine in the field of criminal legislation, as well as the practice of the courts. The basic methodological premise of the report consists in the realization of one's own interpretation regarding the crime committed by the mother against the newborn and its consolidation during the study of the methodological peculiarities of the investigation of the phenomenon.

Discussions and results obtained. The crime of killing the newborn committed by the mother, provided by Article 200 paragraph (1) of the Criminal Code of Romania, is legislated as a distinct crime in most European criminal laws. Its definition varying in different forms such as: infanticide, infanticide, child murder by the mother and not infrequently. It falls under the generic chapter: Murder crimes committed with mitigating circumstances. Life and health are sacred

rights consecrated to the person and necessary to ensure human existence at all times.

International laws attach great importance to the protection of human rights and implicitly of the newborn. These are considered universal values that state and guarantee the right to life, physical and mental integrity of the person since his appearance. Considering the need to grant special protection to the child, several international acts have been identified, among which The United Nations Convention on the Rights of the Child stipulates that the family is considered the natural environment for the development and good growth of all its members, referring in particular to children. Thus, we deduce that the family and implicitly the mother, has the greatest potential to protect her newborn and ensure its physical and mental safety since birth. The development by all criminal legislation of legal norms aimed at protecting the life of the person is one of the most valuable obligations aimed at guaranteeing the right to life.

I. Material element of the crime of infanticide by the mother. The material element of crimes against the person is carried out by the active subject through actions that are found under a wide variety. The material element of the crime of killing the newborn committed by the mother can be achieved both by actions and by inactions that result in its death. The specificity of the activity that represents the material element of the investigated crime is identified with a minimum percentage of use of force that is "of the minimum intensity necessary to suppress the life of the newborn, due to its fragility and its complete dependence on the mother's care" [5, p.135].

The factual ways in which the material element can be achieved are diverse and only have a certain particularity, putting into question the specific killing of the newborn child. Most of the times when the mother performs actions that are directed at the child's body, they can consist of hitting, strangulation, suffocation, drowning. Jurisprudence indicates as comissive ways of suppressing the life of the newborn which it calls active infanticide, actions of which we expose as an example: the application of various cranio-cerebral traumas – the simple compression of the cranial box; neck dissection; applying blows to other vital regions of the body; asphyxiation applied in different ways: suffocation – action performed by compressing the airways with various clothing items or plastic films; by manual strangulation of airway occlusions; by strangulation which can be committed with soft nooses – for example with a scarf, handkerchief, headscarf; with hard or semi-hard loops.

The omission to act in the case of the activity of suppressing the life of the newborn child carried out by the mother can be manifested by refraining from carrying out the actions of providing care and supervision of the newborn. The most frequent omission methods in passive infanticide are: failure to provide minimal vital care to the newborn (the orifices and upper airways of the newborn are not unobstructed by the liquid resulting from the birth and the fetal membranes; it is not sectioned and the operation is not performed ligation of the umbilical cord); leaving the child exposed to the environment without the protection of clothes, in the conditions where the newborn behaves from a thermal point of view almost like a physical body, its ability to thermoregulate body temperature being deficient; not feeding the child; abandonment, which is more common in winter and spring [7, p.315].

By Criminal Sentence No. 795 of the Bucharest Municipal Court, the court established that the defendant gave birth unassisted on the night of April 17, 2002 to a child at her home, on which occasion she put him in a plastic bag, after which she threw him through the household garbage collection pipe in the block where she was living [12]. Given the vulnerability of the newborn child's body and the physical dependence from the first signs of its appearance on the person who gave him life, the means of violence used against him to kill him are of minimal intensity. These consist of compression of the body, suffocation, drowning or abandonment in adverse conditions. The biological functions from the moment the fetus passes from the intrauterine life to that of the neo-natal environment, require a rapid adaptation, the other functions being reduced or insufficient and thus requiring special care so that its body gradually moves to an independent life. We

also identify situations in which accidental acts may occur during labor, such as: "intrauterine asphyxia, premature detachment of the placenta, severe torsion of the umbilical cord" [1, p.80]. Actions can still be performed without external traces of violence through thoraco-abdominal compression; drown as a result of immersion in various liquids; confinement in oxygen-deprived environments; burying the newborn alive in different places or by administering toxic substances, etc. The manifestations that cause the death of the newborn can be identified as: anoxia or hypoxia, achieved by insufficient oxygen intake – these can be produced by wrapping the body in cloths, papers; either by depositing in crates, hermetically sealed suitcases or/and by placing in nylon bags; asphyxiation by drowning as a result of submersion of the newborn's body in various liquids in vessels, such as: bucket, basin; flowing water; blows with blunt bodies; administration of toxic substances [2, p.150].

By criminal Decision No. 544 of the Court of Cassation and Justice of Romania, the Criminal Section showed that: "the mother's concealment of the pregnancy from family members, relatives, together with the forensic psychiatric finding of the fact that, although, at the medical examination, the perpetrator shows a depressive-anxious state, the existence of a mental disorder caused by the birth cannot be retained, the critical discernment being kept with her at that time, constitutes evidence that requires the conclusion that the killing of the newborn child forms the crime of qualified murder and not that of infanticide" [9], criminalized in the Criminal Code of Romania from 1969. In fact, it was noted that: "the unassisted defendant gave birth to a live, female child in a cornfield near the house". After the birth, she procured a hoe, returned to the place where she had left the newborn and killed him by hitting him on the head" [9]. It highlights the fact that the deed is classified as the crime of infanticide in the Criminal Code of Romania from 1969, not the disorder determined by other circumstances of the birth process, but the abnormal psychophysiological state that affects the mother's discernment. "The disorder referred to in the court decision recorded in the medico-legal act was the consequence of the particular conditions in which the defendant found herself, conditions determined by her marital status, being unmarried; the place and circumstances in which she gave birth, or secretly, the birth as a physiological process not being accompanied by phenomena that would cause disturbances, with effects of influencing consciousness and altering the will, a state that would have resulted in the killing of the newborn" [9]. When the material element is achieved through inactions of the mother, these may consist of abandoning the newborn in unfavorable places and in adverse weather conditions, either by not feeding the newborn or not providing care.

In order to complete the objective side, an essential requirement must be fulfilled, respectively, the killing of the newborn child must be carried out immediately after birth, but not later than 24 hours. The victim's death may also occur subsequent to the injurious actions or inactions. In order to strengthen the connection between the moment of birth and for the clearer outline of the essential condition, which was not regulated in the Criminal Code of Romania from 1969, the text of the law was supplemented with the temporal specification that must not exceed 24 hours. This term was established by the legislator in accordance with judicial practice and medico-legal findings. These concerned both the interval in which these disorders can appear as associated with the birth process by the mother, and the exact period when the child had the morpho-physiological characteristics of a newborn. In relation to the delimitation of the period, we can also identify another hypothesis, which follows from the legal content of the crime, as it is delimited: immediately after birth, but not later than 24 hours, from which it follows that even if the act of killing took place within this period, however, the death occurred after this period, the act will be criminalized under Article 200 paragraph (1) of the Criminal Code of Romania. On the contrary, the act will not constitute the crime of infanticide committed by the mother, if it was committed at a time subsequent to this period.

From the legal content of the criminal law, it appears that for the existence of the act pro-

vided for in Article 200 paragraph (1) of the Criminal Code of Romania, the essential condition without which it would be criminalized as murder, we find it in the state of mental disorder in which the mother must be in the 24 hours after the moment of birth. The interpretation of mental disorder must be seen as a notion given by the medical sciences in the medico-psychological field. Medical sciences emphasize that childbirth is a complex psychosomatic process, which is based on psychological factors, which can be intensified or inhibited by the biological processes the mother goes through. According to medical data, the birth or labor process represents the elimination of the fetal appendages through rhythmic and progressive contractions, through the uterine cervical orifice, a process which is characterized by the following stages or periods: "dilation of the cervix (shortened, deleted, up to the complete dilation of 10-11 cm), which is achieved in a time interval that must not exceed 12 hours, under the influence of uterine contractions; of expulsion – lasting 1-2 hours (shorter in multiparous than in nulliparous) when, due to increasingly stronger and more frequent uterine contractions, propulsion of the fetal mobile takes place (the movement of the fetus is achieved, on average, by 1 cm/hour in primiparous and 2 cm/hour in multiparous) with the passage of the following times: a) engagement (at the upper strait of the pelvis, respectively the virtual plane between the upper edge of the pubic symphysis and promontory); b) descent and internal rotation (in the excavation of the pelvis up to the level of the pelvic-perineal floor or the lower strait of the pelvis, respectively the virtual plane between the lower edge of the pubic symphysis and the tip of the coccyx); C) clearance (and external rotation); d) delivery or removal of the placenta – lasting approximately 30 minutes" [6, pp.524-525].

Analyzing and understanding the physiological process of birth, we can specify that the immediate next period in which the mother will be is the post-partum period, which from a pathological point of view is the condition identified with symptoms of fever and pain due to the deficiency of the phenomena induced in the body by the maternal association that it lasts the first 24 hours, identified from a medical point of view in the period of immediate delirium followed by the actual delirium which lasts 10-12 days.

Both in specialized literature and in judicial practice, it has been shown that the psychological position of the perpetrator must be established according to each case in relation to the concrete circumstances and in relation to the instrument capable of producing the desired result used by the mother. Last but not least, it is essential whether the active subject applied the blows to the newborn's body in a vital area or not; by the number and intensity of the blows, as well as by the subject's attitude after committing the act. In the national jurisprudence we identify the case where the defendant was convicted of the murder crime. In this case "on October 5, 2015, when she was the only one at home, the other family members were at work in the fields, the defendant complained of abdominal pain, went to the toilet in the yard of the building and expelled the two newborns without taking any measures to save them. The act of the defendant meets the constituent elements of the crime of qualified murder (against two people, family members) provided by Article 188 paragraph (1) related to article 189 para. (1) letter f) Criminal Code of Romania, in reference to article 199 para. (1) Criminal Code of Romania. The crime was committed with guilt in the form of intention, the defendant foresaw the result of her deed and although she did not pursue it, she accepted the possibility of its occurrence. In this case, the defendant knew that she was pregnant, she perceived the fact that while she was sitting on the chair of the cistern she gave birth, and after her children fell into that cistern she did not take any steps to save them, and thus accepted the possibility of death. From the medico-legal psychiatric expert report, it emerged that no signs of remorse or guilt were found during the defendant's examination and that the defendant did not show post-partum, according to the data from the medical records and the anamnestic data collected in the current mental examination, mental disorders with pathological significance.

Since in the case it was not established with certainty that the defendant was in a state of disturbance at the time of committing the act, the criminal responsibility for the crime of qualified

murder cannot be removed. The defendant's claim that she did not know she was pregnant with twins, that she was not registered in a doctor's records and was never consulted during the period she was pregnant, is of no legal relevance, what is relevant is whether the defendant knew how many children she gave birth to. From the two autopsy reports of the two children, it was clear that they were born one after the other: the first being expelled the one weighing 2100 grams, and the second the one weighing 2200 grams. From the same medical documents, it also follows that in both cases, the appearance of the umbilical cord advocates the interruption of its continuity by active rupture. Given that the defendant has consistently maintained that she was alone at the time of the birth, the conclusion is obvious that she was the one who severed the umbilical cord of both babies, so she knew that she had given birth to two children. Moreover, in the case of the first newborn, some injuries of violence were also found, however, during the criminal investigation, it was not established under which conditions they were caused, and the court did not have elements from which it could be established how they were caused them. Therefore, it was assessed that the change of legal classification in the crime of simple murder and not in aggravated form provided by Article 189 para. (1) letter f) of the Criminal Code of Romania – on two or more persons is not founded and thus, the request was rejected. The request of the prosecutor to change the legal classification in the crime of harming the fetus is unfounded. In order to find ourselves in the presence of the crime of harming the fetus provided for in Article 202 paragraph (2) last sentence of the Criminal Code of Romania, it is necessary that the acts of aggression against the fetus take place during birth, which, according to the specialized literature, is between the moment in which labor begins and that of breaking the umbilical cord. Or, in the case at hand, this moment was passed, the death of the two newborns occurring after the umbilical cord was broken in the case of both children and the birth was over" [10]. The psychology of birth involves, in addition to the psychological manifestations that we find in the birth process, other conditions that are identified in the fear of birth or the fear of not dying.

II. The immediate consequence is part of the description of the action or inaction as a material element of the objective side and constitutes the result of the crime of killing the newborn by the mother. This result can be produced immediately or later, because the law does not require that the death be produced within a certain period of time, i.e. it is not necessary as an immediate result that it be produced within the first 24 hours after the completion of the birth process.

For the employment of criminal liability, the identification of certain serious congenital malformations, incompatible with life in the newborn child who passed to the extrauterine environment is not defining, the requirement for the existence of the crime being that the product of conception is born alive, not necessarily and viable, as it appears from Decision of the Criminal Section of the Supreme Court of Justice in which "the appeal declared by the defendant P.(G.)V. against Criminal Decision No. 315 of the Bucharest Court of Appeal, Criminal Section I, in the alternative requesting a reduction of the sentence. The court rejected the appeal and sentenced the defendant to 15 years in prison and 3 years and the prohibition of rights for the crime of murder" [11].

In judicial practice, we also identify the possibility that the death of the newborn occurs immediately after the biological act of birth has ended, having as causes congenital malformations that are not compatible with life, among which we list: "haemolytic disease of the newborn, blood dyscrasias, haemorrhagic syndrome of the newborn, intrauterine pneumonia, hyaline membrane disease" [2, p.149]. Under these conditions, the active subject exercises the harmful actions on the child in order to suppress his life without knowing that he will die independently of his will, based on medical causes. Thus, the mother, without being aware of the presence of these factors, being in error about the reality, will apply the blows causing death, some authors finding that "it is, however, possible that the child's death occurs immediately after birth, as a result of some malformations congenital conditions incompatible with life (serious conditions contracted intrauterine, pneumonia, broncho-pneumonia, meningo-encephalitis or any other cause of inviability).

The perpetrator, in situations of this kind, does not know the child's illness, but acts in order to suppress life, either simultaneously with the birth, or after the production of the respective effect, being in error about reality. In these cases, the nonviability of the child, does not constitute an impediment for the criminal liability of the mother, in the situation where the child was born alive and the mother suppressed its life" [3, p.174].

We also identify another hypothesis, in which the death of the passive subject occurred based on other factors that are independent of the perpetrator's activity of suppressing the newborn's life immediately after birth. In this context, since the child does not have the status of a person at the time of the mother's actions, she will not be held criminally responsible for the act of infanticide. In no case can we accept the opinion of scholars who orient the subjective side of infanticide towards the guilt form of guilt [8, p.69]. In combating such a thesis, we found that the crime is a commissive act, a character that it retains even when, in a specific case, it is committed through an inaction (commissive-omissive crime). At the moment when the inaction is only the effective way of committing a comissive crime, it follows that the form of incidental guilt can only be the intention. Therefore, causing the death of the newborn by a culpable act of the mother immediately after birth, regardless of whether or not the existence of a birth disorder is proven, will be classified as manslaughter [4, p.175]. The nature and cause of the newborn's death must be analyzed above all, this fact being an indispensable condition that determines the existence of the investigated crime. Depending on the period when the birth occurs, respectively: at term or before, the child may be alive or dead, or if death occurs immediately after the physiological process of birth or after a few hours, the death of the newborn can be: pathological, accidental or violent. In the case of the killing of the newborn, the fact that the woman at the time of birth may not benefit from specialized medical assistance is also discussed.

III. The causality between the action or inaction of the immediate active subject and the result produced consists in the death of the victim, identified in the person of the newborn child.

It is necessary to have a causal link, this fact undoubtedly results from the manner in which the act was committed. The cause of death of the newborn must result from the actions or inactions of the mother. The causal link must exist not only between the mother's activity of killing the child and its death, but also regarding the mother's state of mental disorder, since if this premise does not exist, the crime provided for in Article 200 paragraph (1) Criminal Code of Romania is replaced by the offense provided for Article 188 Criminal Code of Romania. If it is proven that the mother who killed her newborn child immediately after birth, did not act with the spontaneous intention determined by a state of disturbance, but put into execution a decision made before this moment, the act committed by the mother according to the Decision No. 2067 of the Supreme Court – Criminal Section, was classified as a crime of murder. "The defendant's act of hiding the pregnancy and taking measures so that the birth took place in conditions unsuitable for keeping the newborn alive – conditions in which he died shortly after birth – seeing, on a subjective level, the intention to kills the child, constitutes the crime of murder" [14].

In the judicial practice after the entry into force of the New Criminal Code of Romania, the lack of the existence of the circumstantial elements that incriminate the deed as the crime of killing the newborn committed by the mother, will cause the legislator to frame it according to the provisions of Art. 188 reported in Article 199 paragraph (1) of the Criminal Code of Romania, domestic violence. In the current jurisprudence we identify Decision No. 1245 by which the court held: "The accused is a minor and is a student in second grade B at the Technical College M., and she had sexual relations with a young man, actually living at his home and becoming pregnant. The defendant's parents did not agree with this relationship and refused to welcome her home, as she had to live with a friend for a while, and later, at her maternal grandfather's house. She found out about the fact that she was pregnant when she was admitted to M. Municipal Hospital – Pediatric Department, but she did not inform her parents or other relatives about this aspect in the

evening of the same day [...] the defendant realized that she had to give birth and took a blanket from the house, after which she moved to the garden behind the house and after a labor of about 30 minutes she gave birth to a live male child. Being afraid and ashamed of her parents, as well as being afraid of being humiliated by her colleagues and fellow citizens, the defendant made the decision to suppress his life and having a sweater on her put a sleeve around the newborn's neck, made a knot simple and gripped both ends of his sleeve until he stopped crying, dying as a result of strangulation" [13]. The medico-legal expert report certified that the defendant had discernment at the time of committing the crime of killing the newborn, and at the time of the act, the defendant was under the influence of stress caused by the disharmony of the family, the psychological vulnerability of age and the context psycho-traumatizing unassisted birth. The court decided that the deed committed by the minor defendant meets the constitutive elements of the crime of killing the newborn by the mother, provided for in Article 200 paragraph (1) Criminal Code of Romania.

Regarding the state of mental disorder, it is relevant from the comparative examination of the criminal law norms of Romania that the new regulation emphasizes the mental state of the mother identified as a mental disorder of any nature, which is no longer limited as in the Criminal Code of Romania from 1969 on the state of disorder caused by childbirth, temporally fixing the duration of 24 hours from the birth process, during which the mother commits acts of aggression on the victim's body, actions that lead to the suppression of the newborn's life.

Conclusions. Clarifying the state of the newborn, which is closely related to the viability of the fetus and the duration of intrauterine life, is absolutely indispensable for the delimitation of the crime regulated by Article 200 paragraph (1) of the Criminal Code of Romani, from that of killing or harming the fetus.

The exact determination of the newborn's status is particularly important both from the point of view of the correct legal framing of the act and of the activities that determine the administration of the evidence. The newborn state will be determined according to the specific morpho-physiological medical criteria.

From a medical point of view, the newborn quality of the passive subject can only exist in the first hours after the physiological process of birth is triggered and has no relevance if it presents congenital malformations, meets the somato-psychic or viability criteria or if it is desired by the mother or the other members.

The essential requirement is that the newborn is medico-legally born alive. It is not necessary for the newborn to be viable. Usually, the newborn state is highlighted by the morphological peculiarities, starting from the body measurement and quantitatively, by weighing the weight and assessing the proportions. The newborn is part of the category of vulnerable victims. Being at the minimum limit to defend himself, due to the peculiarities of the specific age, the victim is completely deprived of the physical possibilities of defense, as well as the lack of ability to anticipate some behavioral acts of the mother who, at the time of the aggression, has a reduced ability to understand the effects and of the consequences of his acts.

The right to life is a subjective, personal, non-patrimonial and absolute right, with independent existence, which is included in the capacity for use. The rights of the person are recognized from the moment of conception of the newborn child and start from the moment of birth, and if the child was born dead, this right no longer exists, as the requirement to be born and be alive has not been fulfilled cumulatively.

In the meaning of Article 200 paragraph (1) of the Criminal Code of Romania, we can identify the notion of mental disorder only in the psychological or physiological context that does not include the social aspect, restricting the particularities resulting from the expression disorder caused by birth. The mental disorder is not strictly limited to that created by the state of pregnancy followed by the birth process, and the implications of the social context are included in the subjective condition imposed by the current regulation of the crime. As well as the emotional-af-

fective states that were determined by conflicts resulting from the mother's psychic perception that she does not want her child or that she will be judged by the members of the community in a negative way.

Following the study, we propose the ***following recommendation***: it is necessary to draw up an explanatory decision that concretely defines the state/states of mental disorders that are apprehended in the context of the commission of the aforementioned crime of Art. 200 paragraph (1) of the Criminal Code of Romania, which lead to the triggering of traumas caused by the biological process of pregnancy and birth, such as disorders: post-partum blues, post-partum depression or post-partum psychosis, which lead to the decrease the discernment of the perpetrator.

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VOLUNTARY RENUNCIATION FROM COMMITTING THE CRIME BY THE ACCOMPLICE OF THE CRIME

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Summary

In this article we aim to analyze the issue of voluntary renunciation from committing the crime by the accomplice of the crime, and to create a clear, well-argued scientific foundation aimed at combining the provisions of the criminal law with the practice of applying legal norms. As a result of the study undertaken, the legal nature of voluntary renunciation from the crime by the accomplice of the crime was revealed and the signs of voluntary renunciation were defined.

Keywords: voluntary relinquishment, crime, participants, complicity, accomplice to crime.

Introduction. In the legal-penal doctrine of the Republic of Moldova, there is no single opinion and sufficient space is not given for researching the issue of voluntary renunciation of the commission of the crime by the participants in the crime. Therefore, the problems of the effectiveness of the rules on the controversial aspects of the differentiated criminal responsibility of the participants in the case of voluntary renunciation of the crime were removed from the scientific field of view.

The purpose of our research is to create a clear and well-argued scientific foundation of the category of voluntary renunciation of the crime by the accomplice of the crime, aimed at combining the provisions of the criminal law with the practice of applying the rules of law.

Taking into account the fact that there are special conditions regarding the voluntary renunciation of each co-participant, defining certain criteria for the voluntary renunciation of participants in the crime will contribute to the correct and fair application of this legal-penal rule [2, p.171].

In this context, the Russian author А.А. Шакирова emphasizes that the voluntary renunciation of the participants is expressed in the timely withdrawal by the participant of his own contribution in the joint criminal activity following his own, voluntary and final decision [11, p.7].

Author Д.А. Дорогин emphasizes that the voluntary renunciation of committing the crime constitutes a cause that excludes (and does not remove) the criminal liability of the criminal act [6, p.11-12]. It is insisted that the release from criminal liability in connection with the voluntary renunciation of committing the crime constitutes a legal fiction when the existence of conditions is artificially imposed that make it impossible to incur criminal liability for the act apparently similar to the crime [2, p.168].

Methods and materials applied. In order to carry out this study, several methods were used, among which we mention: analysis, deduction, dialectic, logical-legal and systematic.

At the same time, the research undertaken is based on the study of the doctrine and legislation in force, existing in the given field. When conducting the study, the criminal law of the

Republic of Moldova, as well as the national and international specialized literature, served as a reference point.

Discussions and results obtained. In accordance with the provisions of the para. (1), Art. 56 of the Criminal Code of the Republic of Moldova (hereinafter: CCRM), it is considered voluntary renunciation of the commission of the crime by the person ceasing the preparation of the crime or the cessation of actions (inactions) directly aimed at the commission of the crime, if the person was aware of the possibility of consummation the crime, and in accordance with para. (2) of the same article, the person cannot be subject to criminal liability for the crime if he, voluntarily and definitively, renounced to carry it out to the end. Para. (3), Art.56 of the Criminal Code of the Republic of Moldova contains the rule according to which the person who voluntarily renounced the completion of the crime is subject to criminal liability only if the act committed contains another consummated crime [4].

To begin with, we will emphasize that in the Explanatory Dictionary of the Romanian Language the word "voluntarily" is defined as done willingly, unforced, voluntary, which is done of one's own desire and free of charge [12], and the word "definitive" is defined as, which cannot be changed , absolutely, categorically, irrevocably [13].

In the opinion of the author M. Grama, the word "benevolence" means voluntary renunciation, not forced by anyone or anything, that is, when there is the will of the perpetrator to stop the criminal activity under conditions where there is a real possibility to continue it. Renunciation also implies the definitive refusal to commit the prejudicial act. If the perpetrator only abandons the execution started for a certain time, with the intention of resuming it later, under more favorable conditions, there is no effective renunciation of the crime, but only an interruption of the execution [1, p.411].

Renunciation must be voluntary; in other words, the person, apart from some external constraints, must give up the realization of the criminal intention. At the same time, the voluntary nature of the waiver does not exclude that the initiative to stop committing the criminal act may belong to other persons and not to the person who is about to commit this criminal act [2, p.170].

In this context, the author А.И. Плотников considers that not every conscious cessation of criminal activity can be recognized as having a voluntary (benevolent) character, because the interruption of the criminal act can also have a social basis, being conditioned by a staging of the voluntary nature of the renunciation of committing the crime [9, p.12].

By voluntary renunciation of the participants in the commission of the crime, we understand the situation in which one or several participants cease to perform the actions that belonged to them by virtue of the role performed as a participant in the crime in the event that they become aware of the real possibility of carrying out these actions to the end. Voluntary renunciation of the crime by each participant requires criteria, special conditions, the correct definition of these conditions, criteria of the voluntary renunciation of each participant, in part, to the crime will contribute to the correct and fair application of this legal-penal norm.

Next, the study undertaken by us will clarify the legal nature of the voluntary renunciation of the commission of the crime by the accomplice of the crime, because it has certain particularities.

Both the Criminal Code of the Moldovan Soviet Socialist Republic from 1961 (hereinafter the Criminal Code of the RSSM) [3] and the new Criminal Code of the Republic of Moldova from 2002 [4], provided for a participant who contributes to the commission of a crime – an accomplice. As for the CC of the RSSM, in Art. 17 it was mentioned that "an accomplice is considered the person who contributed to the commission of the crime by giving advice, instructions, procuring means or removing obstacles, as well as the person who promised in advance to favor the criminal, to hide the instruments and means of committing the crime, the traces of the crime or the objects obtained by criminal means". According to Art. 42 paragraph (5) chapter IV, Criminal Code of the Republic of Moldova from 2002, the person who contributed to the commission of the

crime by giving advice, instructions, providing information, providing means or tools or removing obstacles, is considered an accomplice, such as and the person who promised in advance to favor the criminal, will hide the means or instruments of committing the crime, its traces or objects acquired through criminal means, or the person who promised in advance to procure or sell such objects". As we can see, in the new CC of the Republic of Moldova from 2002, practically the content of the notion of an accomplice with that of the CC of the RSSM was completely preserved.

Complicity in crime is one of the most common types of participation and, according to practitioners, the least dangerous of them. This approach is justified by the fact that, as a rule, the accomplice to a crime is given a secondary role.

Compared to the actions of other participants, the actions of the accomplice are less significant and less active, they are auxiliary/complimentary in nature. An accomplice, unlike the perpetrator, never commits actions directly foreseen by the objective side of the crime. The circumstance that distinguishes an accomplice from an organizer and instigator is that the accomplice does not show criminal initiative, his activity only representing the support of the decision that has already arisen, independently of the decision, the actions of the accomplice, to commit a certain crime, but the strengthening of this understanding by agreeing to facilitate this criminal activity.

The specialized literature mentions that an accomplice can contribute not only to the commission, but also to any form of participation in the commission of a crime. In this way, it is possible to distinguish between complicity to organize the crime, complicity to instigate and complicity to aid, encourage a crime [5, p.5].

The activities of an accomplice can both precede the commission of a crime and accompany the criminal activity, and even take place after its completion. However, the accomplice must express his agreement to provide assistance, to contribute to the commission of the crime, before the perpetrator completes the actions to achieve the objective side of the crime. Regarding voluntary renunciation, we can speak of an accomplice's renunciation as voluntary only when the renunciation is timely in relation to the commission of the crime, even if their accomplice/s personal activities have already been completed.

In accordance with the current national criminal legislation, in paragraph (4) Art. 56 of the Criminal Code of the Republic of Moldova, the accomplice of the crime is not subject to criminal liability if he took all the measures that depended on him to prevent the commission of the crime [4]. As we observe para. (4) of Art. 56 of the CC, refers to the particularities of the voluntary renunciation of the accomplice to the commission of the crime.

In criminal law theory, eliminating one's own contribution to criminal activity is traditionally considered the primary duty of an accomplice upon voluntary renunciation. A characteristic of the voluntary renunciation of the commission of the crime by an accomplice is, as We mentioned above, that the legislator makes a certain exception for him, namely: if the accomplice took all the measures that depended on him to prevent, preclude the commission of a crime, in this case he is released from criminal liability. Thus, as we can see, the current Criminal Code of the Republic of Moldova does not link the voluntary renunciation of an accomplice to the mandatory prevention of a crime, since his actions may be in a causal relationship with the result that occurred.

In continuation of the ideas, if we are to analyze the text of the criminal law, provided in the para.(5) of Art. 42 of the Criminal Code of the Republic of Moldova, which defines the accomplice, we see that it lists the methods and means of providing assistance that contribute to the commission of a crime, which can be both physical (material) and intellectual (intellectual). We must agree that the differences in the voluntary renunciation of an accomplice both physically and intellectually arise from the fact that an accomplice by physical means indirectly influences the conscience and will of the author, providing him with material, physical or organizational assistance (ex: providing means or tools or removing obstacles, will hide the means and tools, etc.), while an

accomplice through intellectual means directly influences the conscience and will of the author.

Such opinions have also been evoked in the specialized doctrine, the author L. Brînza believes that the voluntary renunciation of committing the crime, even the unsuccessful one, expressed by the accomplice can take place, if he has taken all the necessary measures so that his criminal act not to be committed. The form of voluntary renunciation of the accomplice depends on the type of complicity activity.

Thus, in the case of *physical complicity*, when the accomplice offered the author the tools and means necessary to commit the crime, he must withdraw them. If the assistance from the accomplice consists in providing transportation or removing obstacles that create difficulties in the commission of the crime, then voluntary renunciation can be manifested in a passive form - in the failure to fulfill the corresponding obligations towards the author.

Another situation arises in the case of intellectual complicity, this takes place in cases where the accomplice helped the author by giving advice, providing necessary information, as well as by promises to hide the traces of the crime, the tools and means or material objects obtained through illegal, or by promises to procure or dispose of such objects. Voluntary renunciation in the case of intellectual complicity is manifested in the prevention of the crime by means of one's own forces or by means of other people, or by neutralizing its intellectual influence on the author [2, p.173].

So, the characteristic of voluntary renunciation of the commission of the crime by an accomplice, depending on the way of providing assistance in a criminal act, is of significant interest, since the forms of voluntary renunciation of an accomplice are primarily determined by the type of his activity.

Physical complicity can be expressed in actions such as: providing means or tools or removing obstacles, concealing means or tools for committing the crime, its traces or objects acquired through criminal means or the person who promised in advance to procure or sell such objects.

Providing means and tools for the commission of a crime means the transfer to the perpetrator of various objects necessary for the commission of a crime (firearms, burglary tools, etc.).

Providing the means of committing the crime consists in the provision by the accomplices, for example, of a car for transportation to the scene of the crime or for the transportation of stolen goods, means of communication for coordinating actions during the commission of the crime, providing the necessary amount of money, etc.

Removing obstacles involves some change in the existing situation in order to remove the interferences that prevent the successful implementation of the plan.

Based on the above, we believe that voluntary renunciation during physical complicity can be expressed in both active and passive forms. In the theory of criminal law, the question of the possibility of voluntary renunciation of an accomplice through passive actions is quite controversial; some authors categorically deny the possibility of voluntary renunciation in the form of passive actions with any complicity [7, p.189]. Others, on the contrary, support this position [8, p.32]. We, likewise, support the position of this group of authors and believe that in some cases the voluntary renunciation of an accomplice is possible through inaction. There are cases where the accomplice promised assistance to the perpetrator, without which the latter is unable to commit a crime, but did not take any concrete action to fulfill his promise. If the commission of a crime by the perpetrator depends only on the corresponding actions of the accomplice, it will be sufficient for him to not actually fulfill the obligations assumed. Moreover, in this case, in our opinion, it does not matter if it warns the author in advance about this fact.

Right from the beginning of the criminal activity, when the physical complicity was expressed only by a promise to facilitate the crime in a certain way, the voluntary renunciation of the accomplice may consist in the refusal of the promises made previously and the failure to fulfill the planned actions, i.e. in passive behavior. Refraining from giving assistance from an accomplice, without which the commission of a crime is impossible, in our opinion, amounts to the prevention

of that crime. However, the accomplice's inaction must be voluntary, when he realizes the real opportunity to provide the promised assistance. Consequently, when the failure to provide assistance on the part of an accomplice was the result of forced behavior and occurred against the accomplice's will, due to circumstances beyond his control, in this case there is no voluntary waiver.

Otherwise, the issue of voluntary renunciation is resolved if the accomplice has already assisted the perpetrator and provided means or instruments for the commission of the crime or removed obstacles. When the act of complicity has already been completed, voluntary renunciation of the accomplice is possible only in the form of active behavior, since the further development of events depends on the author, who, due to the conditions created by the accomplice, has a real opportunity to obtain a criminal result. The mere adoption by an accomplice of a decision to voluntarily renounce a crime, unsupported by appropriate actions, does not exempt him from criminal liability for a crime committed by other participants. By his active actions, the accomplice must eliminate the conditions created by him, neutralize his previous activities and completely eliminate the causality of the crime.

So, if the assistance provided by the accomplice consisted in providing tools or means of committing the crime to the perpetrator, then he must confiscate them, withdraw them (for example, an accomplice who provided the murderer with a gun must take the weapon from him before committing the crime). If the assistance consisted of the removal of obstacles, then the accomplice must restore the obstacles to the commission of the crime that he removed (for example, a person who witnessed the crime by disabling the security alarm in the room from which the planned theft is to occur, comes back and turns it on again).

Often, the actions of an accomplice to withdraw his contribution to a joint criminal activity may not always lead to the prevention of the commission of a crime by other participants. For example, an accomplice gave the thief the keys to a warehouse with material goods, but later renounces the previously made decision, fearing criminal liability for complicity in the theft, withdraws the keys from the thief. If the perpetrator nevertheless commits the crime by breaking the locks, then there are no grounds to hold such an "accomplice" criminally liable for this crime. Therefore, an accomplice who took the measures that depended on him, necessary to prevent, eliminate his contribution to the crime breaks the causal link between his previous activities and the subsequent actions of the perpetrator.

However, there are also likely situations in which an accomplice in the case of physical complicity fails to return the instruments or means of committing the crime made available to the participants. The other participants in the crime, having no intention of refusing to complete the crime, may not agree to return the objects they need and hide them in a place inaccessible to the accomplice. From our point of view, there will be no voluntary renunciation in the actions of an accomplice who, trying to return the instruments or means of committing the crime and receiving a refusal, did not take other measures to prevent the crime. The accomplice must take all the measures that depend on him to prevent the commission of the crime. Therefore, the voluntary renunciation of the accomplice can be expressed in the adoption of measures such as warning the alleged victim about the crime that is being prepared against him, suppressing the crime with his own forces, notifying the law enforcement bodies in time about the criminal activities of other participants.

Sometimes the actions of an accomplice in the case of physical complicity, in addition to facilitating the commission of a common criminal act, contain the elements of another consummated crime, in which case he is held criminally liable. This action is also found in the legal framework at para.(3) of Art. 56 of the Criminal Code of the Republic of Moldova, where it is mentioned that "The person who voluntarily renounced the completion of the crime is subject to criminal liability only if the act committed contains another consummated crime".

The next type of complicity is intellectual complicity. Intellectual complicity consists in

the direct psychological influence on the conscience and will of another participant, in order to strengthen his determination to commit a crime. The methods of intellectual assistance emerging from the content of para.(5) of Art. 42 of the Criminal Code of the Republic of Moldova, are the following: contributing to the commission of the crime through advice, indications, provision of necessary information, as well as through promises in advance to favor the criminal, conceal the means or instruments of the commission of the crime, its traces or the objects obtained on criminal way, or by promises in advance that he will procure or sell such objects.

In order to better understand the conditions of voluntary renunciation of an accomplice in the case of intellectual complicity, it would be better to first develop the essence of these actions of the accomplice mentioned above.

By advice is meant explanations and recommendations aimed at indicating to the author more suitable conditions (time, location, methods, etc.) for accomplishing what was planned to complete the crime more efficiently and safely. We consider the instructions to be more specific indications for the perpetrator on how to act in concrete cases of committing a crime. Although, it seems that such a distinction is quite arbitrary and does not have much meaning in practice.

The provision of information involves the transfer to the perpetrator of the crime of such information that expands his knowledge about the alleged object of the crime, creates additional opportunities for successfully obtaining a criminal result, etc. For example, an accomplice transmits information about the time when a person received a large sum of money and the route of his subsequent movement to the perpetrator who intends to commit a robbery on the specified person.

In terms of pre-promised concealment that will favor the criminal, conceal the means or instruments of the crime, its traces, or the objects acquired through criminal means, some scholars argue that this method of giving assistance refers to complicity physics [10, p.66]. In our opinion, this method, like the promised procurement or sale ahead of time of the means or instruments of committing the crime, its traces or objects acquired through criminal means, should be attributed to intellectual complicity in a crime, since a promise made ahead of time to helping the perpetrator after committing the crime creates conditions and strengthens his determination to act. This behavior of the accomplice gives the perpetrator confidence in the ability to avoid the occurrence of undesirable complications after the crime is over, increases the chances of avoiding the punishment of the crime, and is therefore in a causal connection with the socially dangerous result that occurs. And here it is necessary to emphasize that the promise must be made by the accomplice before the crime is committed.

Another situation may be the voluntary renunciation of an accomplice in the case of intellectual complicity where he has only performed part of the task entrusted to him and gathered the information necessary to commit a crime, but has not yet passed it on to other participants in the crime – this situation can be solved quite simply. In this case, the voluntary waiver must be expressed in not providing the information obtained by the accomplice. As an example, an accomplice who has received information about the code and method of disabling the alarm in the room from which the robbery is planned, refrains from transmitting this data. Even if the perpetrator later commits this crime in another way or by independently learning the necessary information, this will not affect the voluntary renunciation of the accomplice.

The situation gets complicated after the accomplice passes on advice, directions or information. This is due to the fact that the act of complicity has already been fulfilled (the accomplice has fulfilled all the functions entrusted to him), his voluntary renunciation must be expressed only by taking active actions. After the author has received the necessary information, the fate of the criminal act passes completely and unitarily in the hands of the author, from that moment the accomplice becomes a passive participant in the crime [7, p.188].

An accomplice, comparatively, in the case of physical complicity versus intellectual complic-

ity, does not have the opportunity to withdraw advice, directions and information previously given. Therefore, they should direct all their efforts to neutralizing his initial activities, to strengthen the criminal determination of the perpetrator and convince him to give up his criminal intentions. If this is not possible, the intellectual accomplice must take other effective measures to prevent the crime (notifying the law enforcement authorities in time; alerting a possible victim, etc.). In this way, the nature of the activity of an intellectual accomplice in voluntarily giving up a crime is often similar to the actions of the organizer and instigator.

In continuation of the ideas, according to para.(4) of Art. 56 of the Criminal Code of the Republic of Moldova, the accomplice of the crime is not subject to criminal liability if he took all the measures that depended on him to prevent the commission of the crime. All this indicates that even if a crime has been committed, the legislator sees in the actions of the willing renunciation of the accomplice only one condition: if he took all the measures that depended on him to prevent this crime.

Therefore, if we are to analyze and make some similarities in the actions of the organizer, the instigator and the accomplice to the release of criminal liability in relation to the voluntary renunciation of the commission of the crime, we argue that the accomplice is unreasonably placed in a privileged position, therefore we propose the legal equalization of the actions of the organizer, the instigator and the accomplice who voluntarily renounced the crime.

Based on the above we can draw the following **conclusions**:

If an accomplice voluntarily renounces the commission of a crime, his main task is to completely withdraw his own contribution to the joint criminal activity. If the act of physical complicity has already been completed, the willing renunciation of the accomplice is expressed in active actions, which aims to confiscate from the perpetrator the instruments or means provided for the commission of the crime or to restore, restore the previously removed obstacles to its commission. An accomplice who renounces voluntarily is subject to criminal liability only if his actions already contain the elements of another consummated crime.

An accomplice's actions of willing relinquishment are both physical and intellectual.

In order for an accomplice in the case of intellectual complicity, who provides assistance in the form of advice, directions and the provision of information, to be recognized as a voluntary waiver, it is sufficient that he refrains from transmitting the necessary information to the author. But when the advice, instructions and information necessary to commit a crime are transmitted and perceived by the perpetrator, the intellectual accomplice, through active actions, must intervene in the development of the causal relationship and convince the perpetrator to give up the criminal intentions or even to prevent the completion of the crime.

The specifics of the voluntary renunciation of a person who promised in advance to favor the criminal, will hide the means or instruments of committing the crime, its traces or the objects acquired through criminal means or the person who promised in advance to procure or sell such objects, consists in the prior notification (before the commission of the crime) of the perpetrator regarding his refusal to participate in an ongoing crime.

The accomplice who contributed to the commission of a crime by giving advice, instructions or providing information is not subject to criminal liability if, by notifying the law authorities in time or by other measures undertaken, he prevented the perpetrator from carrying the crime to the end. The accomplice of the crime is also not subject to criminal liability if he took all the measures that depended on him to prevent the commission of the crime.

If the actions of the accomplice who assisted in the commission of a crime with advice, indications or providing information did not lead to the prevention of the commission of a crime by the perpetrator, then the measures taken may be recognized by the court as mitigating circumstances when determining the punishment.

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THE EMPIRICAL STUDY OF THE CHILD VICTIM FROM THE POINT OF VIEW OF ABUSE

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Summary

The hearing of minors during the criminal process is an aspect of fundamental importance in the current legal system. Through the prism of legislative developments and concerns related to the protection and rights of the child, this process is becoming increasingly complex and important to ensure a fair and effective administration of justice.

The present study analyzes in depth the issue of hearing minor injured persons during the criminal process, and highlights the relevant aspects related to the methodology, practices and implications of this process.

Keywords: criminal process, abuse, victim, minor, analysis, protection, study.

Introduction. The child belongs to the group of those with an increased vulnerability to victimization, due to the specific characteristics of the psyche and behavior, as well as age: being almost completely devoid of physical and mental capacities for self-defense, having a low ability to anticipate one's own actions or of others, especially adults, and presenting difficulties in understanding the consequences of certain actions [1, p.53].

Research in the field and the present study impose the need to offer suggestions for promoting an appropriate social response to such abuses.

Materials and methods applied. Among the methods applied to the study we list the logical, comparative, analytical method. At the same time, the philosophical method is used to develop the study. It was resorted to a systematized and not spontaneous knowledge of the issue regarding the procedure in such situations.

Discussions and results obtained. A minor who has suffered physical, emotional or sexual harm, as a result of the actions or negligence of an adult or an institution, is an abused child. Abuse can take many forms, such as physical violence, emotional abuse, sexual abuse or neglect. Child abuse can have serious developmental consequences, both physical and psychological, and early detection and intervention are fundamental to preventing long-term difficulties.

I. Physical abuse. Physical abuse is often linked to the concept of abuse, whether it is the inappropriate treatment of a child or an adult. This association is due in part to the fact that physical abuse has the greatest potential to produce visible marks, thus making it the most objectively evident form of abuse [2, p.162].

Physical abuse can be defined in various ways, and the simplest definition is as follows: "Any action by the person caring for the child that poses the risk or results in non-accidental (in-

tentional) injury to the child. From another perspective, physical abuse of a child can be described as an intentional action that has the potential to injure the child, and the injuries can range in severity from minor contusions to fractures or fatal injuries. These consequences occur as a result of actions taken by the parent, carer or any other person in authority over the child, including hitting with or without objects, slapping, hitting, biting, strangling, kicking, burning or any other method by which injury is caused. According to this definition, physical discipline is not considered abuse, unless it causes injury to the child" [2, p.163].

Serious forms of physical abuse unfortunately occur within the families of minors, such as beatings and incest (a form of sexual abuse, presented below), with extremely disastrous consequences on the process of psychological and behavioral development and maturation of the respective child [3, p.145].

Clearly defining abuse is difficult because some authors believe that physical abuse is not limited to causing injury, but also includes exposure to situations in which the child could be harmed, as well as the threat of such possibility of harm. In trying to determine whether the child's injuries are the result of an accident or an assault, significant considerations are taken into account. Where the injury occurs plays an important role in the assessment. Certain scrapes on the elbows or knees, for example, can be attributed to accidental falls, while bruises on the chest, back or buttocks can suggest child abuse. Examining bruises can provide relevant information, as distinctive shapes of objects with which the child was hit can sometimes be identified, such as a palm, a belt, a wooden spoon, a rope or a washing machine hose. The nature of the injuries is also an essential clue; for example, a bite or certain burns are difficult to hide or attribute to accidents. At the same time, the severity of the injuries can provide relevant clues about possible child abuse. This is among the most reported forms of abuse, because it leaves visible traces that can be easily noticed by other people, not just the victim.

II. Sexual abuse. Child sexual abuse is a serious form of violence in which an adult or other older person uses the child for sexual purposes. This abuse can consist of inappropriate touching, sexual contact of any kind, exposure to pornographic materials or any other inappropriate sexual behavior that affects the development and well-being of the minor [2, p.145].

Many cases of sexual abuse go undetected for a significant period of time because they can be asymptomatic. However, in the long term, this type of abuse has serious consequences on the psycho-social functioning of the minor victim. Child victims blame themselves and internalize the causes of the abuse, making them less likely to disclose the abuse. In specific situations where sexual abuse involves incest, reporting is even more difficult. The consequences of this type of abuse are much more serious compared to cases where the abuser comes from outside the family.

Incest, when committed by a father on his minor daughter, can have very serious consequences on her personal development. Such situations are unfortunately quite common, they fall within the wider scope of sexual molestation of minors, which can be equated with rape, given that the injured persons are usually very young and do not have the capacity provided by law to express their agreement/ consent [3, p.147].

In this sense and not singular is also the situation of 25.06.2013 with reference to this crime of incest: „The witness V. Ochita was away from home, the defendant V.N. was at home with his 16-year-old daughter V. L. and three other minor children of his. After the children fell asleep, the defendant proposed to the witness V.L. to have sex, and the witness accepted. The next day, a contradictory discussion took place between his wife and the witness V. Ochița, who had learned from her daughter that she had a sexual relationship with his father, regarding what happened the previous day. During this discussion, the defendant went into the attic of the house and set several clothes on fire, and the fire spread, burning part of the roof of the house. Following the investigations carried out regarding the fire, the police bodies found out that a normal sexual relationship took place between the defendant and his daughter the previous day, reporting the

crime of incest.

According to the medico-legal Report No. 2227/A1/05.08.2013 of IML C., witness V.L. presented remnants of the hymen membrane in the form of postpartum myrtiform caruncles, and the serological examination revealed extremely rare sperm heads in the vaginal discharge.

According to the forensic Report No. xxxxx/04.09.2014 prepared by the National Institute of Forensics – Bioforensics Service, in the biological samples collected from the witness V.L. the presence of acid phosphatase was revealed, and its genotyping revealed a genetic profile identical to the genetic markers corresponding to the defendant's genetic profile.

Being heard during the criminal investigation, the defendant V.N. admitted the commission of the act, declaring that he was under the influence of alcoholic beverages and that he had a normal sexual relationship with his daughter V.L." [4]

Sexual abuse can be characterized as a sexual interaction involving a child in an abusive context. In this situation, the minor child is the person under the age of 18. Also, the doctrine considers that a minor does not have the capacity to express consent regarding sexual activities. In this sense, the abusive situation, as outlined in this paragraph, involves an inequality of power and age where an adult can influence or coerce a child to satisfy his sexual needs [2, p.164].

Sexual abuse can be divided into two categories, *sexual activities with contact* (such as massaging the genital area of the child, penetration of any type, incest, rape, indecent presentation, as well as asking the child to touch or massage the genital areas of the abuser) or *no contact* (corruption, coercion, threatening the child to engage in activities that serve to obtain sexual pleasures of another person, child pornography). Sexual contact between minors is considered abuse if the age difference is greater than 3-5 years, depending on the state, this difference being evaluated to determine the inequality of force [2, p.165].

Sexual abusers are rarely violent individuals. In general, they resort to a strategy similar to „courting" in the preparation of sexual abuse, that is, a practice of luring and attracting the minor in such situations. Initially they establish a bond with the child by identifying the vulnerable (those who are lonely, neglected or with strained relationships with their parents). In order to maintain contact, abusers often also come into contact with the children's parents in various forms. However, if the abuser is from the child's family, this interaction is no longer necessary. There is a period called setting the stage, where the abuser gains the trust of the community or family. If the child is left unsupervised, even when the abuser is outside the family, it can directly lead to a bond with him. After this connection is formed, the abuser strengthens the relationship with the child, often isolating the child from other people because, once isolated, the chances of the child noticing what is happening to him become less. Once the abuser gains access to the minor, he strengthens his bond with the minor, often treating him as an adult and trying to draw him into an adult-like relationship. This is a common practice for girls.

As an example, we can mention a case instrumented, in 2023, by the policemen of the General Directorate of Police of the Municipality of Bucharest, the Homicide Service, which consists in the fact that: "The injured person A.S. in 2018, when she was 11 years old, she lost her mother who died of cancer. Following this fact her uncle F.F. (aged 53) who lived at that time in the municipality of Alba Iulia, moved to the municipality of Bucharest to the home of the injured person A.S. to take care of him. After a few months, from the moment the two started living together, one evening while they were sitting in bed watching TV, F.F. put his hand into the trousers of the injured person A.S. touching her genital area with the palm of his hand. This moment was the first act of sexual abuse committed by F.F. against his niece A.S. Next, over the course of about 3 years, F.F. sexually assaulted and raped his niece A.S. constantly. In the year 2021, due to the increasingly inappropriate behavior of the said F.F., A.S. managed to tell a neighbor that she doesn't get along with his uncle and doesn't want to live with him anymore. The neighbor, the witness B.M., notified DGASPC Sector 4, which was supervising the case of the injured person A.S., and later F.F.

was stripped of his guardianship rights, moving back to Alba-Iulia. After this moment A.S. was placed in foster care with her neighbor B.M. After about 2 years, after the relationship between the injured person and B.M. consolidated, A.S. she told everything that really happened between her and his uncle during the time they lived together".

Considering the fact that A.S. complained about the described aspects after a long period of time, the main direct evidence in the file was the minor's injured person statement. Like this case, most of the facts of this kind are very difficult to prove, they are committed in an intimate setting, without witnesses and are reported late causing a difficult administration of evidence. For this reason, in the criminal process, hearing the minor victim of a crime is very important and sensitive. The minor must be encouraged to relate what happened by himself, in his own words, as he perceived the situation, without being in any way influenced by the hearing criminal investigation body.

In the case of boys, the abuser may show an apparent interest in their play activities, thus simplifying access to the child. Regardless of the context, the abuser's goal is to develop a relationship in which he provides affection and attention to the child. Thereafter, sexual behavior is gradually introduced, initially showing no sexual intent, then progressing to the use of obscene language, non-sexual touching, and finally explicit and intrusive behavior in sexual areas.

To prevent juveniles from disclosing traumatic events, abusers often use either gifts or threats to ensure they remain undetected. When they want to introduce the concept of collaboration in the relationship with the child, they prefer to give gifts and attention more often. Even when parents and caregivers pay attention to children, the early stages of abuse are not always obvious. There are signals, such as objects or amounts of money of foreign origin, discovered on the child, only indicate a possible problem without clearly revealing the abusive act [2, p.166].

The most serious form of sexual abuse of minors is sexual exploitation. Among the most frequent forms of sexual exploitation of minors are child pornography, child prostitution and trafficking for sexual exploitation.

Regarding child pornography, it can be defined as "the visual exposure of a child (person under the age of 18) in indecent or erotic positions". The problem of child pornography has grown exponentially with the development of the Internet.

Child prostitution is an activity in which a child is involved in behaviors of a sexual nature, including sexual acts, in exchange for financial compensation. Although this form of abuse is strongly condemned by law, the number of cases seems to be increasing. Both nationally and internationally, significant efforts are being made to recognize these children involved in prostitution as victims of abuse. Children with a history of family abuse are more likely to run away from home and become exposed to alcohol or drugs, which put them at increased risk of becoming involved in prostitution.

Trafficking related to sexual exploitation is a phenomenon associated with prostitution. Within this phenomenon, elements such as the organization of sexual exploitation and coercion into sexual slavery can be found. The illegal nature of this activity makes estimating the number of victims difficult, suggesting that the actual prevalence may be higher than available estimates, although some trafficking networks are cross-border and others operate locally. Traffickers tend to select their victims from vulnerable categories such as the disadvantaged or poor. They often choose young people, sometimes even minors, at a young age to be included in the traffic activity, around the age of 13. These victims are lured with promises and impressed by the traffickers' interest in them [2, p.166].

III. Emotional abuse. Emotional child abuse is the most difficult form of abuse to observe, especially because of the difficulty in defining and operationalizing this form of abuse. The results of multiple studies indicate that, although rarely identified, this emotional abuse has a significant impact on the physiological manifestations, emotional and cognitive functioning, as well as the

behavior of the minor. The term emotional child abuse is often used interchangeably with psychological abuse, however there are distinct differences between the two. Definitions using the term psychological abuse tend to emphasize the impact on cognitive abilities (attention, memory, intellect), while the literature using the term emotional abuse emphasizes social and emotional development (ability to form attachment, identify reference, expression and differentiation of emotions). It is essential to recognize the abuse in order to implement appropriate interventions in such situations [2, p.167].

Emotional abuse is characterized as an intentional symbolic or verbal action carried out by the parent or the adult responsible for the child's care, with the aim of causing or being able to cause a significant deterioration of the child's mental state [6, p.40]. Consequences this type of abuse can negatively affect both the child's mental and physical health. Studies have highlighted how the characteristics of emotional abuse are reflected in the quality of the relationship and interaction between the child and the parent/educator/caregiver. Emotional injury can generate anxiety, feelings of degradation, humiliation and confusion in the relationship with the abusive adult. It is important to emphasize that emotional abuse does not consist of a single act, isolated incidents, or even a series of inappropriate actions, and does not necessarily involve the explicit intent to cause distress. Rather, this type of abuse involves a series of ongoing behaviors that are abusive in nature, such as belittling or belittling, humiliating, threatening, harming or abandoning, or merely threatening harm or abandonment, restricting the child's movement, or confining the child in tight or dark spaces, blaming, constant use of negative nicknames or labels, forcing the child to self-inflict, inflicting excessive punishment in terms of frequency and/or duration.

IV. Neglect. Neglect is most often described as the absence of fulfilling the responsibilities of the parent or legal representative towards the minor. This lack can be identified as a failure to meet the minor's basic needs, rather than conforming to minimum expectations of care. At the same time, neglect can be perceived as a branch of abuse, which can manifest both as isolated events and as a behavioral pattern of the major, in which the parent or other family member fails to provide the child with the care and support necessary for well-being and its evolution, despite the fact that it would be able to do that [2, p.169-170].

A child at risk of moral corruption often finds himself in a condition of neglect produced by various events and conditions, such as the death of parents, lack of affection/compassion on the part of those responsible for his upbringing and education, neglect of of the child's moral and intellectual needs, repeated conflicts between parents/guardians or between them and the child, exaggeration of authority or absence of affection. Consequently, the lack of emotional support from the guardians, in the context of the psychological fragility characteristic of the childhood period, is the main element that determines the minor's escape from residence or protective institutions, as well as living on the streets. These circumstances often lead to the interruption of the educational process, as periods of voluntary absence and life on the streets are equated with absence from school and, ultimately, school dropout [5, p.153].

We cannot pass without reporting by presenting an example, identified following our own study, regarding the forms of abuse studied as it includes them all. The time relevance of the consequences must involve its analysis in all forms, in order to stop these forms of abuse that can have repercussions until the end of life. Without presenting the real data of the people involved, we mention that it is about the commission of a crime in a continuous form in the family, between the brother and the minor sister with the complicity of the mother, let's say, in the form of indirect intent.

In 2011, the police were notified by the friend of the minor A., the latter was at her home where she asked for help and told that her brother B. had sexual relations with her.

The police bodies from the district of Bucharest, where the crime took place, took minor A. from her friend's residence. She was mentally affected because the sexual relationship with broth-

er B. had just taken place. She was taken to the INML where biological samples were collected, later revealing the presence of acid phosphatase inside the vagina (semen).

In fact, the first sexual act took place at a young age of minor A. when she stayed at home alone with brother B. She did not say because she did not have the discernment at that time, considering herself guilty. She tried to forget that moment. Later, sexual relations took place when the parents were not at home, brother B. taking advantage of the vulnerability of sister A. The minor always failed to oppose brother B. as she had already had sexual relations and the vulnerability could no longer make her oppose. The pain caused led her to tell her mother what had happened. Mother didn't believe her, because brother B. didn't admit it. Later, their mother caught them having sex. Mother took measures, negative to solving the problems, without notifying the police authorities. She advised her daughter not to say that she would be laughed at. The only measures were that the two brothers no longer stay alone at home.

The criminal activity continued. For a period of time, brother B. avoided sister A. Later, brother B. caught sister A. alone and had sex again. At the end he apologized every time. She told her mother, but mother did not take action that time either. The only measure was not to leave them alone. Brother B. changed the way he ended up having sexual relations with his sister: he would hide in the home until his parents left, after which he would come out of hiding and thus engage in other sexual relations with his sister who no longer resisted due to her vulnerability and lack of discernment.

Proof of fact. Brother B. was not aware of the research carried out. Everything was kept secret, minor A. being instructed not to tell her mother or anyone else.

Identification checks were carried out on brother B. establishing that he had a pending case at the traffic regime. The police bodies, with legend, contacted brother B. and under the pretext of the case from the circulation regime, he was requested to collect biological samples. He agreed. Together with the police, they went to the INML, where biological samples (DNA) were taken from him, resulting from the analyzes that the genotyping of the genetic profile of sister A. taken from inside the vagina (spema) is and belongs to brother B.

Even if the obtaining of the evidence could be contested through the mode of acceptance, it could be obtained through the court. He was sentenced to 11 years in prison and the mother convicted of complicity.

But the repercussions continue. The minor, who became an adult, got married without telling her husband what had happened. Brother B. was convicted for the crime of incest. When the mother and brother were released, the husband was contacted and told the story, and as a result of the separation, sister A. was left on the road, having to return to her parents' home and continue to live with her brother.

What we observe, this tragic example brings together all the forms of abuse presented.

If we analyze the consent of minor A. at the time of the commission of the crime, at all stages, there is no such consent due to the lack of discernment that had to be established by the judicial bodies and the vulnerability. We can say that the act does not fall under the crime of incest, but the crime of rape.

Physical abuse occurs together with sexual abuse, injury to the genitals. Emotional abuse is the state of fear that sister A. will have all her life, even more so as she is forced to live in the same home with the abusive brother as an adult. The mother's neglect and lack of measures led to the commission of the act and tacit acceptance of sexual relations.

We ask ourselves what measures should be taken by the authorities to prevent such abuses from existing.

Conclusions and recommendations. We can conclude that abuse of any kind against a minor is a serious problem in our society, with particularly serious consequences for the child's development and health. An abused child presents emotional, cognitive, social and behavioral

problems in the future. Also, these minors are prone to dropping out of school, crying at home, living on the streets and belonging to groups with criminal/delinquent purposes.

The abuse of minors is imperatively necessary to be prevented by the whole society through education, counseling, awareness, the development of policies and laws, and last but not least, the approach with involvement and professionalism in the criminal processes in which the victims are children.

In the sense of the criminal process, minor victims must have a specific hearing procedure, which relates to their level of development, to defend their rights and freedoms, and to avoid their revictimization. The minor is encouraged to relate freely by being asked as few questions as possible, using his own language and narrating the incident as he understood it. In such a hearing, no leading or closed questions are asked and avoid being asked about the same issues more than once.

As ferenda law proposals, we consider important to introduce a text in the CPC regarding the hearing of minor victims. In this sense, we propose a text with the following wording:

„*Minors, victims of sexual abuse are heard with respect and taking into account the vulnerability produced as a result of the outcome, assessed and analyzed in all aspects and objectively*".

As application norms, we propose: encouraging free reporting; not to ask suggestive or closed questions; the statement should not be transcribed in text format at the time of the hearing, being followed in this sense: the discussion with the minor should have continuity; elimination of dead time caused by drafting; the criminal investigation body and the minor remain focused on the free discussion in order to be able to easily observe the reactions of the minor and thus avoid traumatizing the child or subjecting him to additional stress following participation in the hearing.

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ACTS OF OUTRAGE* IN THE CONTRAVENTIONAL AND CRIMINAL LEGISLATION OF THE REPUBLIC OF MOLDOVA - CHARACTERIZATION AND SOLUTIONS TO IMPROVE THE NORMATIVE FRAMEWORK

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Summary

The public authority is part of the category of social values forming the object of criminal protection, without the observance of which it is impossible to exercise state power in order to achieve the public interest. In this study, the author has analysed the repressive and preventive model established in the legislation of the Republic of Moldova in terms of the protection of the public authority against acts of contempt. The immediate object of the research resides in the idea of revealing the deficiencies of the normative framework in force in the Republic of Moldova regarding the contravention and criminal sanctioning of acts of contempt; in the more distant prospect, it aim at the elaboration and prospective implementation of some lex ferenda proposals which would streamline the application of the reference criminal norms. By means of the implementation of the obtained scientific results, the deterrent effect of the contravention law and the criminal law will be dosed in the prevention of acts of contempt and, respectively, in the more effective protection of the public authority.

Keywords: authority, criminal protection, offence, minor offence, contempt, etc.

Introduction. The exercise of the functions by the public authority implies a close interaction with the members of the public, a fact generating numerous legal relations within which the recipients must submit to the will of the authority. The legal nature of these reports is mostly determined by the obligation of the recipients to execute the legal acts imposed by the authorities, acts which, in one way or another, embody the public interest and are based on the legitimacy of the establishment and functioning of the authorities. When the recipients commit dangerous acts, they fail to comply with those legal acts, whereas the legal order at the basis of the exercise of authority is violated, by also involving the application of criminal law provisions.

The reason for the adoption of a mechanism for the protection of the public authority and for the effective prevention of criminal conduct harming or endangering it constitutes a particularly current topic for criminal doctrine and judicial practice. This is especially necessary in the context of political instability and the increased vulnerability currently faced by the public institutions through which authority is exercised. European states are seriously affected by the phenomenon of offence as well as by other risks endangering the activity of public authorities. Hence, they are bound to constantly amend the normative framework in order to prevent and fight the effective combating of criminal acts that threaten the normal development of social relations regarding the exercise of public authority.

The offence of contempt is part of the category of offences against the public authority, which is characterized by a large weight of spread in the judicial practice of the Republic of Moldova. According to the statistical data provided by the Ministry of Internal Affairs of the Republic of Moldova, 118 insult offences were registered in 2023 and 25 such offences were committed in in

* Author's note: for the purpose of the present study, the Romanian term "ultraj" (corresponding to the French "outrage") will be used as "contempt" or "insult" in English.

2011. One can observe a particularly accelerated increase in contempt offences aimed at jeopardizing social relations based on the idea of prestige that public officials must enjoy when involved in the exercise of the functions of public authorities.

The above increase in acts of contempt in the Republic of Moldova is based on several criminogenic factors of political, social, cultural, economic and legal nature. Within the limits of this study, we do not intend to deepen the criminological dimension of the phenomenon, as it will be analysed in the context of other scientific approaches. However, among the causes determining the ineffectiveness of the deterrent effect of the norms regarding the sanctioning of acts of contempt, there are also technical-legislative deficiencies in the formulation of the mentioned norms. As the study of judicial practice proves, these deficiencies generate confusing and uneven interpretations in the legal classification of acts of contempt.

Discussion and results.

Contempt minor offences. In the legal system of the Republic of Moldova, the protection of the public authority against acts of contempt shall be carried out by the rules of contravention law (concerning minor offences) and the rules of criminal law. Both categories of legal norms, emerging from the essence and legal physiognomy characterizing them, exercise a preventive function. This results from the provisions of art. 2 of the Code of Minor Offences, according to which "[t]he purpose of the contravention law consists in the defence of legitimate rights and freedoms of the person, the defence of property, public order, other values protected by law, in the settlement of cases of minor offences, as well as in the prevention of the commission of new minor offences". [1] In the same sense, according to art. 2 para. (1) of Criminal Code, [t]he criminal law protects, against offences, the individual, his/her rights and freedoms, property, environment, the constitutional order, the sovereignty, independence and territorial integrity of the Republic of Moldova, the peace and security of mankind, as well as the entire legal order".[2]

Therefore, both through minor offences and criminal offences, the legislator aims at protecting social values and social relations existing in addition to these values. The distinction between minor offences and criminal offences is made depending on the degree of damage to social values and relationships. It is understandable that criminal offence causes greater damage to the values and social relations subject to protection against illegal conduct, as long as it is about contempt.

In the Code of Minor Offences of the Republic of Moldova, criminal liability is provided for four categories of contempt, as minor offences:

– **insulting a doctor or a medical worker** (art. 77 of the Code of Minor Offences) entails insulting a doctor or a medical worker, i.e. the premeditated insult to his/her honour, dignity or professional reputation, in the exercise of the latter's function. The act is sanctioned with a fine from 10 to 25 conventional units applied to a natural person;

– **insulting the military** (art. 352 of the Code of Minor Offences) entails insulting a military, i.e. premeditated offending of his/her honour, dignity or professional reputation in the exercise of military service obligations, other actions (inactions) harming the rights of the military. The act is sanctioned with a fine from 6 to 15 conventional units or with unpaid community service from 20 to 40 hours;

– **insulting or resisting a law enforcement agent** (art. 353 Code of Minor Offences) entails insulting a law enforcement agent, i.e. premeditated insult to the honour and dignity of a prosecutor, a criminal investigation officer, an intelligence and security officer, a special status employee of the Ministry of Internal Affairs, another individual in the exercise of the function or public duty of ensuring the security of the state, maintaining, ensuring and restoring public order, ensuring the safety of road traffic, executing court decisions and enforcement writs and combating offence, expressed by action, verbally or in writing. The act is sanctioned with a fine from 6 to 15 conventional units or with unpaid community service from 20 to 40 hours.

A first finding that can be made in this respect is related to the sanctioning regime for the

above-mentioned minor offences. It can be easily observed that the quality of the victim is a special criterion on the basis of which the legislator institutes different sanctions for insulting offences with special differentiated minimum and maximum limits. Thus, the insult committed against a doctor is considered to be a milder sanctioned offence than insulting the military. In turn, the insult against the military is sanctioned milder than insulting a law enforcement agent. We believe that in this case the legislator took into account, on the one hand, the vulnerability of the victim in the performance of his duties and, on the other hand, the degree of damage to social relations in respect of the public authority. Therefore, the legislator considered that public authority is harmed most seriously when contempt is committed with regard to an official representing a public authority in the field of law enforcement.

Another aspect to be established refers to the location of the respective minor offences in the system of rules contained in the special part of the Code of Minor Offences. Thus, the minor offence of insulting a doctor (art. 77^2 of the Code of Minor Offences) is located in Chapter VII with the generic title of "Minor offences threatening the health of the population, the health of an individual, the sanitary-epidemiological state". The minor offences of insulting the military (art. 352 of the Code of Minor Offences) and those of insulting a law enforcement agent (art. 353 of the Code of Minor Offences) are located in Chapter XVIII entitled "Minor offences affecting administration. Minor offences in the field of market surveillance, metrology, standardization and consumer protection".

Therefore, based on the legislation in force, the above-mentioned facts are regulated as minor offences regarding absolutely different generic legal objects. In the case of insulting a doctor – by using the criterion of the marginal designation of Chapter VII of the Special Part of the Code of Minor Offences – one draws the conclusion that the generic legal object is formed by the social relations conditioned by the protection of the health of the population and that of individuals, as well as the sanitary-epidemiological state. Referring to the minor offences of insulting the military and the one of insulting a law enforcement agent, the generic legal object of the minor offences is formed by the social relations determined by the normal activity of the administrative bodies. It is obvious that such a legislative approach is confusing since namely social relations in the field of exercising public authority are of legal nature of insult. In this context, we will revert thereto in the chapter on Conclusions with some proposals for reshaping the reference normative framework so that the legal nature of minor offences of contempt be congruent with the place of their criminalization.

Offences of contempt. In the Special Part of the Criminal Code of the Republic of Moldova, the criminalization of contempt is established in art. 349 of Chapter XVII entitled "Offences against public authority and state security". When designating the offence, the national legislator does not use the classic term "contempt" [3], as for example it is used in the reference Romanian criminal legislation [5]; it refers instead to the lexeme of "threat or violence committed against a person with a position of responsibility or to a person who fulfils his/her public duty". We mention, however, that the term "contempt" was used in the previous criminal legislation represented by the Criminal Code of the Moldavian Soviet Socialist Republic (RSSM) of 1961. Thus, in art. 205, the 1961 Criminal Code criminalized "insult against a representative of power or a representative of public organizations, which maintains public order", and in art. 205^1 it referred to "insulting a police officer". Distinctly, using the criterion of differentiated legal individualization, in the 1961 Criminal Code, criminal liability was established for: defamation of law enforcement agent (art. 205^2); the threat or violence perpetrated against an official person or a citizen who fulfils his/her public duty (art. 206); attempt on the life of a police officer (art. 206^1); premeditated damage or destruction of the assets of police agents (art. 206^2) [4].

The criminal legislation in force of the Republic of Moldova, namely at art. 349 of the Criminal Code, provides for two normative versions of the offence of contempt. The first normative

version, provided for in art. 349 para. (1) of Criminal Code consists of "threat of death, injury to bodily integrity or health, or the destruction of the assets of the responsible person, his close relatives, in order to stop his/her professional duties, or to change his/her character in the interest of the one threatening or of another person, as well as the same threat against the person fulfilling his/her public duty or his/her close relatives in connection with the participation of this person in the prevention or elimination of an offence or an antisocial act". The second normative version, according to art. 349 para. (1^1) of the Criminal Code, implies "applying violence not dangerous to life or health towards the person with a responsible position or his/her close relatives, or the destruction of their property in order to stop their professional duties or to change his/her character in the interest of the one applying violence or of another person, as well as the same actions applied against the person fulfilling his/her public duty or his close relatives in connection with the participation of this person in preventing or solving an offence or an antisocial act".

The criminal liability for the above-mentioned offences is aggravated when they are committed in the presence of the following aggravating forms: a) the application of violence dangerous to the life or health of persons; b) destruction of goods by dangerous means for the life or health of several people; c) material damages in large proportions; d) other serious consequences.

The differentiation between the criminal acts described in art. 349 para. (1) and para. (1^1) of the Criminal Code is based on the evaluation of the seriousness of the illegal action, which in the first case is manifested by *the threat of violence*, and in the second case by *the actual use of violence*. In the case of the second offence, the legal individualization of the punishment is also performed by means of a subsidiary criterion, represented by the degree and intensity of the violence. Thus, art. 349 para. (1) of the Criminal Code is applicable when violent contempt is expressed by the application *of violence not dangerous to life or health*; however, one shall apply the aggravated provisions of art. 349 para. (2) let. a) of the Criminal Code when *the violence is dangerous for life or health*. Thus, the offence provided for in art. 349 para. (1^1) of the Criminal Code is punishable by a fine ranging from 850 to 1350 conventional unit or by unpaid community service of 180 to 240 hours, or with imprisonment of up to 3 years. When committed in the presence the aggravating factors from par. (2) of the same article, the contempt is punishable by imprisonment from 4 to 8 years.

Problems regarding the legal classification of contempt. In relation to the normative framework for the criminalization of acts of contempt in art. 349 of the Criminal Code of the Republic of Moldova, we would like to note two aspects, which arouse discussions, especially at a practical level.

The first problem concerns the interpretation of the content of "violence not dangerous to the life or health of an individual" and "violence dangerous to the life or health of an individual", which are signs of the legal content that are the basis of the individualization of the criminal punishment for violent insult according to art. 349 para. (1^1) and art. 349 para. (2) let. b) of the Criminal Code. Despite the fact that the meaning of these notions is well understood and has a recognized argumentative interpretation, uneven and contradictory interpretations appear in the national case-law, which hinders the idea of criminal justice in line with the principle of the legality of incrimination.

In a case, "On XXXX, around XXXX o'clock, BE and BD were both in a state of alcoholic intoxication on a local road on the outskirts of the city XXXX, while the police officers SP and CM were performing their duties and intended to put an end to LP's actions, who was driving a means of transportation in an irregular manner. BE and BD were disturbing the public order and interfered with the activity of the police officers by addressing them with uncensored words and by threatening them, including their family members, with physical abuse and death. At the same time BE and BD resorted to violence not dangerous for the life or health of the police officers, by means of punches on different parts of the body, thus causing bodily injuries to the injured parties. As a

result, CT suffered [...] minor bodily injuries, and PV [...] minor bodily injuries. Thus, the actions of the defendants BE and BD fell within the provisions of art. 349 para. (1^1) of the Criminal Code". [6]

According to the court of law, it follows that the slight bodily injury sustained by victim CT was considered as "violence not dangerous" for an individual's life or health. However, a different approach has been established in the specialized doctrine and the explanations of the Supreme Court of Justice of the Republic of Moldova aimed at the unification of the judicial practice regarding the interpretation of signs of "violence not dangerous" for the life or health of an individual.

Thus, in the point of view of authors S. Brînza and V. Stati, "the application of violence that is not dangerous to the life or health of an individual" means either the intentional causing of bodily injuries, which results in neither the disorder of health nor the loss of work capacity, or the intentional application of blows or committing other violent actions causing physical pain, but does not create danger for the life and health of the victim" [7, p. 884]. A. Borodac opines that "violence which is not dangerous to the life and health of the victim is considered to cause an insignificant injury to bodily integrity or health which did not lead to a short-term deterioration of health or an insignificant but stable loss of work capacity, this merely constituting an minor offence, as well as the intentional application of blows or other violent actions that only caused specified physical pain". [8, p. 185]

In accordance with the Decision of the Plenary of the Supreme Court of Justice no. 23 of 28.06.2004 *on the judicial practice in criminal trials concerning the theft of goods,* violence not dangerous for the life or health of an individual [art. 187 para. (2) let. e) of the Criminal Code] entails minor injuries (which did not cause a health disturbance for more than 6 days, nor the loss of work capacity, which results from point 74 of the Regulation on the medico-legal assessment of the seriousness of bodily injury, approved by Order of the Ministry of Health no. 99 of 27.06. 2003, amended by Order of the Ministry of Health no. 654 of 16.08.2011) or the intentional application of blows or the commission of other violent actions that caused physical pain (art. 78 para. (2) of the Code of Minor Offences), if these actions did not endanger the life and health of the victim. [9]

Another notion of violence not dangerous for the life or health of the person has been established in the Decision of the Plenary of the Supreme Court of Justice of 22.11.2004 *on the practice of applying the legislation in the cases of human trafficking and child trafficking*: "Physical violence not dangerous for the life and health of an individual consists in causing the intentional infliction of bodily injuries, which do not result in a short-term disruption of health or an insignificant but stable loss of work capacity, or the intentional application of blows or the commission of other acts of violence that caused physical pain, unless they have endangered the life or health of the victim". [10]

From the above-mentioned notions, it follows that "slight injury to bodily integrity" is attributed to "dangerous violence" and not to "violence not dangerous" for a person's life or health. Therefore, in the previously presented case, the act was to be classified under art. 349 para. (2) let. b), and not under art. Art. 349 para. (1^1) of the Criminal Code of the Republic of Moldova. In our view, this inadvertence in the interpretation of the sign "violence not dangerous" for the life or health of an individual is to be resolved through legislation, so that the incriminating norm corresponds to the rigors of the principle of the legality of incrimination.

The problem of legal individualization of criminal punishment for contempt. Within the framework of legal individualization, the legislator, on the one hand, created a general system of punishments by regulating the types of punishment and the general (lowest and highest) limits, and, on the other hand, the legislator establishes in the special rules a specific punishment in nature and duration for each individual offence, considering the abstract seriousness of the deed.

With strict reference to the sanctioning regime, an unfair approach is found in the legislator's determination of the categories and limits of punishments established in art. 349 of the Criminal Code of the Republic of Moldova in relation to the sanctions established for some offences

against the human personality. In fact, this problem was also brought to the attention of the Ministry of Internal Affairs of the Republic of Moldova in the analysis of the possibility of improving the criminal legislation in the field of offences against the public authority, in which it is mentioned that "In the part concerning the sanctions currently provided by the Criminal Code for the deeds directed against a civil servant, they are non-essential and disproportionate to the seriousness of the deed committed; respectively, the educational aspect of criminal liability does not produce its effect, which generates disrespect towards public persons in the exercise of their duties".

Starting from such a rationale, it is proposed to adjust the penalties at least within the limits of the penalties provided for the same similar deeds provided by the Criminal Code. In this sense, the sanctioning regime applicable to the contempt manifested by threatening to kill the victim described in art. 349 para. (1) together with the offence of threatening to kill or seriously injure bodily integrity or health. Thus, the first offence is punishable with a fine of 650 to 1350 conventional units or with unpaid community service of up to 180 hours, or with imprisonment of up to 2 years, whereas the second one is punished with a fine ranging from 550 to 750 conventional units or with unpaid community service from 180 to 240 hours, or with imprisonment from 1 to 3 years.

Therefore, a paradoxical conclusion is reached: when an individual is threatened with death regardless of the reason and purpose, a harsher punishment can be applied than when the same deed is carried out against a representative of the public authority aimed at stopping his/her activity of service or changing the character thereof. The one threatening with death an individual fulfilling his/her public duty in relation to his/her participation in the prevention or termination of an offence or an antisocial act receives milder punishment.

Conclusions and proposals for *lex ferenda*. In the light of the research carried out in the present study, we highlight the following conclusions and proposals for improving the existing legislative framework in the matter of the prevention of acts of contempt:

1. Depending on the gravity of the acts of contempt, the framework of the punitive norms of the Republic of Moldova sanctions them either as minor offences or as criminal offences. The criterion underlying such a legal individualization of the applicable sanctions is determined by the material element of the deed, which outlines the gravity of the different normative and factual ways in which this illicit conduct can be manifested, by which the public authority is endangered or harmed. Verbal or non-verbal insult damaging an official's honour and dignity is penalized as a minor offence, whereas the insult committed by the application of mental or physical violence is penalized criminally;

2. The normative placement of the acts of contempt in the contravention legislation (insulting a doctor or a medical worker – article. 77^2 of the Code of Minor Offences; insulting a military – article. 352 of the Code of Minor Offences, and insulting or resisting a law enforcement agent – article. 353 of the Code of Minor Offences) does not correspond to the legal nature related to these acts of danger, which essentially affects social relations in the field of exercising public authority. Therefore, we consider that, by means of a *lex ferenda,* these facts are to be placed and described in Chapter XVI of the special Part of the Code of Minor Offences of the Republic of Moldova with the marginal name of "Minor offences affecting the activity of public authorities";

3. In order to standardize the incriminating norm to the criteria of constitutionality, we propose the re-wording of the phrase "violence not dangerous to life or health" from art. 349 para. (1) and the phrase "violence dangerous to life or health" by means of specifying the degree of violence and the actual injuries caused to the victim as a result of the application of acts of violence;

4. Based on the evolutionary trends of the spread of contempt offences on the territory of the Republic of Moldova, we consider that it is necessary to reassess the criteria for legal individualization of the criminal sanctions applicable for committing contempt in order to dose the deterrent effect of the criminal norms provided for in art. 349 of the Criminal Code.

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REFLECTIONS ON THE CONCEPT OF ORGANIZED CRIME WITHIN THE LEGISLATION OF THE REPUBLIC OF MOLDOVA

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Summary

This study examines the concept of organized crime within the legal framework of the Republic of Moldova, focusing on legal aspects and associated judicial practices. It delves into the definitions and interpretations of organized crime both internationally and domestically, exploring how Moldovan legislation addresses this complex criminal phenomenon. Through analysis of relevant laws and examination of judicial precedents, the research investigates the legal strategies and mechanisms utilized to combat and prevent organized crime in Moldova.

Additionally, it assesses the challenges and potential future directions in addressing this form of criminality, highlighting the importance of adapting legislation to evolving dynamics and international standards. By critically evaluating legal frameworks and judicial approaches, this study aims to contribute to a deeper understanding and more effective response within the Moldovan legal system to combat organized crime.

Keywords: organized crime, offence, legislation, international standards, European Union.

Introduction. Recent studies offer a grim picture highlighting the worsening situation regarding international organized crime, illustrated both by the expansion of the geographic scope of its manifestation and by the diversification of illicit methods and means of profit generation, along with the range of targeted objectives. The social danger stemming from the crimes committed by criminal organizations is profound and comprehensive. Essentially, these offenses not only threaten the safety of citizens but also undermine the foundations of authority and state stability. Additionally, they erode trust in governmental institutions and distort social equilibrium with the aim of seizing "power". When engaging in illicit activities, criminal organizations not only resort to violence and fraud to achieve their goals but also disrupt the moral and ethical values of society. Through drug trafficking, human trafficking, corruption, and other forms of crimes, these groups not only violate the law but also corrode the moral basis upon which the community is built. In light of these circumstances, the activities carried out by organized crime groups have exceeded the sphere of relative predictability regarding motivations, methods, and objectives. This suggests that the promoters of these activities can carry out operations in any corner of the world.

After the submission of the application for accession of the Republic of Moldova in March 2022, the European Commission established nine steps that Moldova must follow in its accession process. These steps are linked to the values and standards of the Member States of the European Union, especially democracy and the rule of law, including opinions regarding judicial reform and public administration reform, as well as fundamental human rights. In June 2022, the European Council granted candidate status to the Republic of Moldova and invited the Commission to prepare a report on the Republic of Moldova's application for accession to the European Union. In the document entitled "Commission Opinion on the Application of the Republic of Moldova for Accession to the European Union" [2], the accession conditions of the Republic of Moldova to the EU (European Union) are found, and in Chapter 1.3 Rule of Law, letter „c" – Organized Crime

specifies that Moldova has signed and ratified the UN conventions against transnational organized crime, as well as the protocols on human trafficking and migrant smuggling, being aware of legislative changes regarding the fight against organized crime. Criminal Procedure Code regulates investigation and criminal prosecution activities, agreements of collaboration with European law enforcement agencies, and participation in international crime-fighting platforms. However, anti-money laundering legislation only partially reflects international standards, and efforts to combat financial crime and money laundering require consolidation. Moldova is in a key position for illegal trafficking to the EU, but has a limited history of convicting traffickers and members of criminal organizations. The Commission considers that the Republic of Moldova should make more effort to investigate and counteract organized crime networks.

Organized crime represents one of the most complex and persistent phenomena facing modern society. In the context of the Republic of Moldova, this phenomenon is defined and regulated by national legislation, as well as by international standards and treaties to which the country is a party. According to Moldovan law, organized crime is defined as criminal activity committed by an organized group or association of persons, acting in a coordinated and planned manner for the purpose of committing serious crimes.

The main crimes associated with organized crime in the Republic of Moldova include drug trafficking, smuggling, money laundering, corruption, and other illegal activities that significantly harm the security and stability of society. It is important to note that organized crime is characterized by a complex structure and meticulous planning of criminal activities, aiming to avoid detection and punishment by authorities.

Therefore, according to the current criminal law, Article 284 of the Criminal Code, para. (1): "Creating or leading a criminal organization, i.e., founding such an organization and organizing its activities, whether searching for and engaging members in criminal organization, holding meetings of its members, creating financial funds and other nature to support their financial and criminal activities of the organization, adopting and executing decisions by its members, creating and managing subordinated organizations, as well as other activities aimed at creating a stable structure and organization for the commission of serious crimes, shall be punished by imprisonment from 8 to 15 years.

(2) Membership of a criminal organization, i.e., the voluntary joining of such organization, in order to participate in the commission of serious crimes, and any other actions aimed at strengthening, expanding and maintaining the activities of a criminal organization, shall be punished by imprisonment from 15 to 20 years or life imprisonment" [3].

From the analysis of the original version of the Penal Code [3], it can be observed that the first paragraph of the criminal norm provision has not undergone any modifications for almost 20 years. Regarding the sanction of the norm, the criminal penalty, by the Law of the Republic of Moldova for amending and supplementing the Penal Code of the Republic of Moldova No. 277 [4], the quantum of the penalty has been considerably reduced, initially being established with a custodial sentence ranging from 16 to 25 years.

In 2016, through the Law of the Republic of Moldova regarding the Prosecutor's Office No. 3 of 25.02.2016, by introducing Art 134^{11} which regulates the punishment of terrorist offenses, there is a conditioning of the modification of Art. 284 Penal Code, with paragraph (2) which incriminates the creation or leadership of a criminal organization or an organized criminal group with the purpose of committing one or more terrorist offenses is punished with imprisonment from 15 to 20 years or life imprisonment.

In order to update its national legislation regarding the fight against transnational organized crime, the Republic of Moldova ratified by Law No. 15 of 17.02.2005, "United Nations Convention against Transnational Organized Crime" [5] adopted in New York on November 15, 2000, where it translates ad litteram the text of the convention, where the expression "organized crimi-

nal group" appears. However, after a careful analysis of the two texts, we can observe a departure by the Moldovan legislator from the definition of organized crime offered by the convention.

According to Law No. 50 [6] on the prevention and combating of organized crime, organized criminal activity refers to actions or inactions, as well as to the system of actions or inactions, aimed at committing one or more offenses provided for in the Special Part of the Penal Code by criminal groups or organizations. By the term organized crime, we understand a social phenomenon that involves criminal groups and organizations, their criminal activity, the criminal acts committed by the members of these groups and organizations, as well as their preparatory acts, for the purpose of committing offenses, alongside other offenses considered to be committed by a criminal group or organization according to the Penal Code.

Law No. 50 defines organized crime as a "social phenomenon that includes criminal groups and organizations". Even though from a legislative point of view, the notion of a criminal group is not defined, the phrase can be found in two articles of the Penal Code, namely Art. 284 – Creation or leadership of a criminal organization, para. (1): "...either coordinating criminal plans and actions with other criminal organizations and groups or individual offenders from the country and abroad ..."; para. (2): "Creation or leadership of a criminal organization or an organized criminal group ...", as well as in the content of Art. 286 Penal Code – Actions that disrupt the activity of penitentiaries: "Persons who, while serving a prison sentence, terrorize the convicts who are on the path to correction or commit violent attacks on the administration, or organize criminal groups for these purposes or actively participate in such groups, are punished with imprisonment from 3 to 10 years.

If we refer to the forms of criminal participation, the Penal Code generally provides for 4 distinct forms: "simple participation, complex participation, organized criminal group, criminal organization (association)" [3]. However, other forms of criminal participation can be found primarily in the Penal Code special part, such as: Art. 283 Banditry armed gang; Art. 279 paragraph (1) letter b) Organized criminal group, criminal organization; Art. 282 Paramilitary formations, as well as various other forms such as terrorist group, terrorist organization, extremist organization.

We appreciate the fact that the lack of precise definitions of the two forms of participation regarding the offense of creating or leading a criminal organization may give rise to challenges regarding the correct classification of this offense. Considering the large number of offenses associated with organized crime, especially qualified offenses to which aggravating circumstances are attached, these being "committed by an organized criminal group or a criminal organization" or "in the interest of an organized criminal group or a criminal organization", the absence of terminology only generates significant difficulties in correctly classifying these offenses.

In this regard, in her doctoral thesis, author Florena Sterschi asserts that: "the acts that can be committed by an organized criminal group or by a criminal organization can only be exhausted by offenses characterized by this qualifying sign" [7].

Even though the criminal norm does not quantitatively and qualitatively define the modes of organization of organized crime, criminologist M. Bârgău proposes the following divisions: "simple organized group (2-4 persons, without a complex structure, leaders and subordination, with a participative command), structurally organized group (5-10 persons, with greater stability, a leader, a permanent character well delimited in time with qualified personnel), organized criminal group (10 or even hundreds of members, pyramidal organizational structure), criminal gang (armed group, high level of organization and direct subordination to the leader), mafia union (a criminal structure, which, depending on the level of organization and the nature of the activity, exceeds the boundaries of its own formation)" [8].

In line with criminologist M. Bârgău's opinion on the quantitative classification of criminal groups, authors V. Bujor and V. Guţuleac classify criminal groups depending on their level of development, highlighting the following forms: "plurality of offenders, diffuse group, criminal group,

criminal gang, criminal organization, criminal association" [9].

Authors I. Antonian and V. Pahomov are of the opinion that the phenomenon of organized crime is reduced to a phenomenon that, on a new basis, provides the conditions for the fusion of interests offered by general-criminal and economic crime, when serious offenses are committed by organizations of offenders, which are stable, mobile, hierarchical, and deeply conspiratorial, led by leaders or a group of leaders, and which constantly tend to expand the proportions of the criminal organization's activity [10, p.68].

In the legislator's understanding, the "organized criminal group" is defined based on Art. 45 Penal Code, as "a stable gathering of persons who have previously organized to commit one or more offenses" [3], this being the basic unit, which by associating several groups results in the fourth form of participation, namely "Criminal Organization or Association", the latter being defined as a gathering of organized criminal groups in a stable community, whose activity is based on division among the members of the organization and its structures, of the functions of administration, assurance, and execution of the criminal intentions of the organization in order to influence the economic and other activities of natural and legal persons or to control them in other ways, for the purpose of obtaining advantages and achieving economic, financial, or political interests" [3].

As can be seen from the analysis of the definitions, comparing them with the definition provided by Art.367 paragraph (6) of the Romanian Penal Code, which defines the organized criminal group as "the structured group, formed by three or more persons, constituted for a certain period of time and to act coordinated in order to commit one or more offenses.", the two definitions are similar, with minor differences.

Although a specific number of members forming the criminal group is not mentioned, it is presumed to be a gathering of two or more persons with well-defined roles within the organization who, through careful organization, plan the commission of offenses.

According to judicial practice, these features are not sufficient to distinguish them from other forms of participation [11, p.354].

According to the concept supported by specialized literature: "Any person belonging to an organized criminal group is not a mere participant in the group's actions but a member of the group, regardless of the functions and roles they hold in criminal activities. Implementing the criminal activity plan" [12, p.89].

We cannot agree with this opinion because a person may provide services for the benefit of the organization, or the criminal group may outsource certain services without that person becoming a member of the organization. Unlike Art.284 of the Moldovan Penal Code, Art.367 of the Romanian Penal Code expressly incriminates "...supporting, in any form, such a group is punishable by imprisonment".

In our opinion and that of several authors, the characteristic that differentiates an organized criminal group from other forms of participation is stability, persistence, and unity [13], all of which are difficult to prove, leading to complications in defining the aggravation of criminal liability based on aggravating circumstances such as "committed by an organized criminal group" and "committed by two or more persons".

In this regard, the Supreme Court of Justice has ruled: "the commission of theft by an organized criminal group occurs when this act is committed by a stable gathering of persons who have previously organized to commit one or more offenses. Unlike two or more persons who have previously agreed to commit theft, the organized criminal group is characterized, in particular, by stability, by the presence within it of an organizer, and by a pre-elaborated plan of common criminal activity, as well as by the mandatory distribution of roles among the members of the organized criminal group, during the preparation of the theft" [14].

Regarding the notion of a criminal organization (association), this is defined by Art. 47 of the Penal Code, as: "a gathering of organized criminal groups in a stable community, whose activi-

ty is based on division among the members of the organization and its structures, of the functions of administration, assurance, and execution of the criminal intentions of the organization in order to influence the economic and other activities of natural and legal persons or to control them in other ways, for the purpose of obtaining advantages and achieving economic, financial, or political interests".

In the complex world of crime, criminal organizations represent highly intricate and diverse entities that transcend the mere qualification of a criminal group. These entities are presented in a variety of doctrinal classifications, reflecting their complex nature and adaptability to the legal and social environment. From formal and well-organized structures to informal and flexible networks, criminal organizations bring substantial challenges in terms of defining and effectively combating them within the legal framework.

It is essential to highlight that delimiting a criminal organization to a specific maximum number of participants is a debatable issue, considering that the legal definition imposes no clear numerical restriction in this regard. On the other hand, determining the minimum number of participants in a criminal organization is the subject of a complex analysis, requiring a meticulous interpretation of legal provisions. In this regard, the combined interpretation of relevant articles of the Penal Code indicates that the criminal organization must consist of at least 4 persons to be considered as such under the law. This approach reflects the nuances and subtleties associated with defining and delimiting criminal organizations within the context of criminal legislation.

According to Prof. Dr. Alexandru Borodac, the essence of a criminal organization is outlined by the strategic gathering of pre-existing criminal groups, their solidarity and extreme cohesion, characterized by their stability and permanence over time. Another defining aspect is the presence of clearly outlined and well-determined criminal intentions. Within this entity, durable organizational links crystallize, serving as a foundation for planning and executing a wide range of criminal activities, surpassing the limit of individual and isolated offenses. Therefore, criminal activity becomes a true occupation for the members of the organization, evolving into a profession or even a trade. This perception underscores the complexity and depth of organized crime, highlighting its nature and preeminent character in the sphere of criminal activity [16].

From the analysis of the text, several aspects emerge that differentiate the creation or leadership of a criminal organization from banditry. Firstly, the criminal organization aims to influence the economic activities of individuals or obtain material or immaterial advantages, contrasting with banditry, which is characterized by direct attacks against individuals or properties. Additionally, the criminal organization can act both with and without weapons, using various means to commit crimes, unlike the criminal gang, which relies solely on the use of firearms or other dangerous tools [16, p.419].

Another essential distinction is that the crimes committed by a criminal organization are planned and executed in an organized manner, and the responsibility for these primarily rests with the organizer or leader, who bears responsibility for all actions carried out by the organization. In contrast, members of the criminal organization are responsible only for their participation in crimes or for the role they play in preparing or committing them.

Thus, the author suggests that the creation or leadership of a criminal organization involves a complex and strategic approach to criminality, while banditry is characterized by more direct and violent actions.

The European Union, aware of the gravity and extent of organized crime, has adopted legislative measures aimed at combating this scourge. Through Joint Action 98/733/JAI [17] and the Framework Decision of the EU Council of 24 October 2008 [18], the European Union has clearly defined the notion of a criminal organization and established criteria for criminalizing participation in them in member states.

The definition of a criminal organization, according to these legislative acts, encompasses a

structured association established over time, acting concertedly to commit serious crimes, with the aim of obtaining financial or other material benefits. This notion covers a wide range of criminal activities and addresses groups operating with a high degree of organization and planning.

The difference between the definitions provided by the Joint Action and the Framework Decision lies in the emphasis on the purpose of criminal activity. While the former defines the criminal organization in terms of obtaining material benefits, the latter focuses on the serious nature of the crimes committed and the intention to obtain those benefits. This aspect highlights the importance of assessing the purpose and overall activity of the criminal organization in the process of criminalization and prosecution.

Criminal groups or organizations have been present throughout the history of criminal codes in the form of criminal participation, manifesting through various offenses such as illegal slave trafficking, robberies, assaults, or piracy. The evolution of incriminating the act of creating or leading a criminal organization has been marked by a change in the social value protected by the corresponding criminal norm, from public tranquility or social security to the integrity of the state.

During the evolution, the Penal Code became more comprehensive, introducing elements such as the purpose oriented towards committing crimes, the responsibility for leading subunits subordinate to the criminal organization, and the incrimination of membership in it. However, until 1994, there was no distinct concept of a "criminal organization", and therefore, separate responsibility for creating or leading it was not incriminated.

In the historical period analyzed, various forms of organized crime were identified, such as gangs, armed groups, or illegal associations, and sanctioning the activity of organizers was accompanied by the condemnation of group participants. However, concepts and terminology have evolved, and currently, there is a discrepancy between domestic legislation and international norms regarding the definition and criminalization of forms of organized crime.

In conclusion, it is evident that harmonizing the national legislation of the Republic of Moldova with international norms is necessary to ensure better prevention and combating of organized crime. At the same time, it is important to clarify and adapt the concepts and terminology in domestic legislation to reflect international standards and practices in the field.

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THE LEGALITY OF CRIMINAL INCRIMINATION IN ECtHR JURISPRUDENCE

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Summary

Legality is the basic pillar of the construction of modern constitutional states. In this context we have set out to address this subject in the present research. At the moment, the legal framework is at a standstill in terms of accessibility and predictability of criminal rules. This is a serious violation of fundamental human rights and the case law of the ECtHR highlights this with convictions based on infringement the provisions of Article 7 of the European Convention on Human Rights entitled „No punishment without law".

The legality of criminal incrimination will be highlighted in the context of the ECtHR case law, in order to exclude an extensive unfavourable interpretation of the criminal law and a faulty classification of criminal acts by the law enforcement bodies of the convicted State. The subject of the research highlights the problems encountered in the legislation in the area of criminalisation of the criminal act and determines the topicality of this subject, arousing a greater scientific interest.

Keywords: legality, incrimination, criminal act, punishment, ECtHR, case law, criminal law, accessibility, predictability.

Introduction. The legality of the criminalisation of criminal acts, in terms of a complex process of legal qualification of the offence carried out by the legislator, has recently become an increasingly frequent subject both in the literature and in judicial practice. This interest is dictated by the modern realities of striving towards a clear, predictable and accessible legal framework in line with national, constitutional and international provisions. So, the legal framework on the criminalisation of criminal acts is no exception to this desire.

Legality is the basic pillar of the construction of modern states based on the rule of law which, seen as a fundamental rule of the legal system enshrined as a principle, is also a guiding precept of criminal law, imposing both the legality of the offence and the legality of the sanction.

Today, at European level, the legality of criminal offences and sentencing must be respected in the light of Article 7 of the European Convention on Human Rights (hereinafter - ECHR) [12], according to which *"No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor may a heavier penalty be imposed than that which was applicable at the time the offence was committed"* [5, p.3].

The prerogative to condemn a State before the European Court of Human Rights when there is a serious violation of fundamental human rights is an essential mechanism to protect humanity by conferring certain privileges on citizens who have suffered an abuse of rights.

Although the ECtHR does not presume to substitute itself for the national court in the legal classification of the criminal act, its guiding role is to verify the applicant's conviction, in particular whether it had a legal and equitable basis at national level [12, p.11].

Unfortunately, the criminal legislation of the Republic of Moldova currently contains nu-

merous rules of an unpredictable nature. Thus, the Criminal Code still contains rules that are uncertain, lacking sufficient clarity. These provisions have not yet been referred to the Constitutional Court for a declaration of unconstitutionality [2].

The Moldovan legal framework is in a continuous dilemma in terms of accessibility and predictability of criminal rules. In this way, fundamental human rights are directly violated, and the case law of the ECtHR highlights this, as there are convictions on this basis – infringement of Article 7 of the European Convention on Human Rights – „*No punishment without law*". Such problems are raised by both theorists and practitioners.

This need requires above all, that the law should define offences in clear terms and provide concrete criminal sanctions. The definition of what constitutes an offence must be made using common language that is accessible to all, so as to avoid the risk of extending the law by analogy and double, triple, etc. interpretation of a rule.

In this regard, we conclude that the topic of this research will highlight the problems that we encounter in the legislation in terms of criminalization, especially will determine the topicality of this topic and will also arouse scientific interest.

Methods and materials applied. The following methods were used to achieve the intended purpose of this work: *analisys* – under the fundamental aspect of the concept of criminalisation of criminal legality is strongly emphasised, reflecting the highest criteria of criminal legality at international level in the light of ECHR regulations and the judicial precedent of the European Court of Human Rights; *the comparative method* – is used in order to make a broad comparative analysis of the perceptions of criminalisation at international level in relation to national courts; *generalization* – forms the basis of the analysis of the work in question, outlining the most relevant theoretical and practical ideas and conclusions regarding the legality of criminal incrimination.

Purpose of the article is to elucidate the errors of incrimination in criminal law, to highlight the problems encountered at the legislative level in this chapter, being a topical subject of scientific interest to young researchers.

Discussions and results obtained. Anticipating the idea of the author George P. Fletcher in his seminal work "Basic Concepts of Criminal Justice", we find some essential rules for determining the incrimination of the crime and establishing the criminal punishment. In particular, the author argues that: "Individuals need to know what the law is at the time they are said to have broken it"; "Individuals need to know what might be of moral importance to them at the time of choosing whether or not to commit the act"; "Criminal liability does not exist without the offence being charged to a specific perpetrator" [8, p.229].

So, with reference to the first criterion, it is precisely for this reason that the principle of the legality of criminal incrimination in the Republic of Moldova is seriously violated, which also leads to numerous condemnations by the ECtHR for abusive violation of Article 7.

In some criminal norms, the Moldovan legislator does not meet the essential conditions of clarity, predictability and accessibility of the law, which a norm must meet in order to be published in the official gazette. An example of this is the offence of hooliganism, which is criminalised under Article 287 of the Criminal Code [2].

The Constitutional Court has been declared unconstitutional by the petitions submitted to it, declaring unconstitutional some norms of the Criminal Code (CC) of the Republic of Moldova which do not meet the necessary degree of clarity and predictability in the sense of a criminal law. Here we refer to the provisions of Article 189 (Extortion) para.(3) let. f) CC, (Aggravating other serious consequences), declared unconstitutional by Constitutional Court Decision No. 24 of 17. 10. 2019 [9].

The above-mentioned judgment declared unconstitutional also the rules of the following articles of the Criminal Code of the Republic of Moldova: Art. 307 para.(2), let. c) – Pronouncement of a sentence, decisions, judgments, decisions contrary to law (resulting in serious consequences);

Art. 327 – Abuse of power or abuse of office (resulting in serious consequences); Art. 329 para. (1) – Neglect of duty (public interests), and para.(2) let. b) (other serious consequences); Art. 335 para.(1^1) – Abuse of duty (resulting in serious consequences).

The authors of the exceptions of unconstitutionality argued that the contested provisions contravene to the legal norms stipulated in the Constitution of the Republic of Moldova, namely: Article 1 para.(2) – State of the Republic of Moldova; Art. 22 – Non-retroactivity of the law; and Art. 23 – The right of everyone to know his rights and duties [6].

In the grounds of the exceptions of unconstitutionality and the petitions submitted, the authors of the initiatives of *lege ferenda* argued that the common notion used in the above mentioned articles of the Criminal Code – "serious prosecution" – does not meet the requirements of the quality of criminal law, being in contradiction with Articles 1 para. (3), Art.22 and 23 of the Constitution. In particular, they argued that: "the law does not establish the meaning of the term "serious prosecution" [9, p.14]. Its meaning would be determined in practice by a subjective, discretionary interpretation by the prosecuting body and the court, which leads to abuses by those with criminal law enforcement powers.

In the absence of fixed benchmarks laid down in the criminal law, the classification of the harmful consequences of the offence as "serious consequences" is left to the discretion of those applying the criminal law, leaving the individual in legal uncertainty.

In the grounds of the action, the Constitutional Court held that in legislative activity, the principle of the legality of the incrimination and punishment intervenes both in material and formal terms. „From a substantive point of view, that principle imposes two fundamental obligations on the legislature:

(1) to lay down in a legal text the acts considered as offences and the corresponding penalties;

(2) to draft the legal text with sufficient clarity so that any person can see what actions or inactions are covered by it. While the formal aspect refers to the obligation to adopt criminal rules as organic laws, according to Article 72 para.(3) let. n) of the Constitution of the Republic of Moldova" [9].

Despite this, there are still many unclear provisions in the provision of the incriminating rule in criminal law. The Criminal Code contains a multitude of such regulations in the special part both at the level of criminalisation of criminal acts and with regard to the consequences of the harmful act. For example: Article 278 (Terrorist act) – in the description of the incrimination rule, we find the expression "or the commission of another act that creates the danger of causing death", which is again a lack of clarity in the incrimination of the act. What would these "other acts" be? Also, in this article we again identify the phrase "other serious consequences", on which the Constitutional Court has not yet ruled on the declaration of unconstitutionality of the rule in question.

If we were to carry out a thorough analysis of the Criminal Code of the Republic of Moldova, in countless provisions of the criminal rules there are still the expressions "other serious consequences", "other acts", "other particularly serious consequences". But what actions are covered by these phrases? What specific actions would mean other serious consequences, other acts? What did the local legislator have in mind with these expressions?

In addition to this, the legislator does not abstract from the notions of serious and particularly serious consequences, does not explain the "seriousness" of these consequences in any rule of the Criminal Code, i.e. the person cannot determine the difference between what is serious and what is particularly serious. There are countless question marks on this point. Even though the Constitutional Court has declared unconstitutional a number of provisions lacking predictability, the legislator has not yet amended the criminal legal framework to exclude these loopholes [3].

In this respect, the referrals have not been made, but the legality of the incriminations remains affected because the criminal rules are unclear and lack predictability. Consequently, the

person cannot adapt his behaviour to the facts, as long as he does not even know their extent and proportions. The person cannot determine the extent of the offence on his own, since the rules do not clearly transpose the offence and its consequences.

In other words, this raises many questions for the citizens of modern constitutional states, and the conviction of persons under these provisions would seriously violate fundamental human rights in infringement of Article 7 of the ECHR, a situation which has been found many times in the Court's case law.

As an example of the predictability and accessibility of the law, the judgment in *Tristan v. Moldova Case* could serve as a basis for the violation of Article 7 of the ECHR by "Sentencing the applicant on the basis of a criminal provision which entered into force after the date of the events and which changed the wording of the subject-matter of the offence". Unlike the legislator, the national judges, without any justification, did not distinguish between two concepts ("person in a position of responsibility" and "person in a position of public dignity"), which was considered to be an equivocal interpretation of the criminal law [10, p.1].

On 25 December 2008, the prosecutor of the Cimislia Prosecutor's Office indicted the applicant for excessive use of power by a person in a position of responsibility, an offence under Article 328 para.(1) CC of the Republic of Moldova. The complainant was accused of embezzling funds during the exercise of her mandate as mayor.

During the consideration of the case, the Parliament of the Republic of Moldova adopted Law No. 245 of 2 December 2011 which, inter alia, amended the provisions of Article 328 para. (3) let. b) of the Criminal Code, by replacing the expression "*person of high responsibility*" with the expression "*person of public dignity*". This law also amended Article 123 of the Criminal Code by introducing and defining the notion of "*person holding a public office*" [10].

On 22 December 2014, the Plenum of the Supreme Court of Justice adopted an explanatory ruling in which it held that a mayor is not a "person of public dignity" within the meaning of the criminal law. Referring to the above mentioned explanatory ruling, the Court held that the offence provided by Article 328 para.(3) let. b) of the Criminal Code in its new wording could not be attributed to the applicant.

The applicant was convicted under a criminal law which had entered into force while the criminal case against her was pending and which, in her view, was not applicable towards her. Unlike the criminal law in force at the time of the events, the new law did not provide for a penalty for the acts of which the applicant had been accused. The prosecution, disregarding the relevant provisions of the present case, considered that the old concept of "*person of high responsibility*" and the new concept of "*person of public dignity*" were identical.

The Court thus concluded that the national courts had applied the provisions of a criminal law which entered into force after the events. The ECtHR notes that the definition of this concept was different from the definition of "person in a position of responsibility" which was used during the examination of the case, arguing, in particular, that it did not meet the criteria laid down in the new definition, which constituted a restrictive interpretation of the new criminal provisions. The Court also notes that the new definition of "person in a position of public dignity" has delimited the circle of persons liable to be prosecuted for the offence of which the applicant was accused [10].

With reference to the argument of the Government of the Republic of Moldova, according to which the applicant had in any case the status of a public person, bearing criminal liability for acts committed in that capacity, the Court emphasises that the excess of power committed by a public official is an offence punishable under another provision of the Criminal Code, namely Article 328 para. (1), and that the penalties imposed for that offence are considerably more gentle than those provided for in Article 328 para.(3) let. b) of the Criminal Code".

In this context, the Court found a violation of Article 7 ECHR as the findings of the national

courts were not reasonably foreseeable, representing a source of uncertainty [10].

The European Court of Human Rights, in its jurisprudence, establishes the criterion that Article 7 of the ECHR must be interpreted in such a way as to ensure effective protection against arbitrary prosecution, conviction and punishment *(Rohlena v. Czech Republic [MC], 27 January 2015, § 50; Vasiliauskas v. Lithuania [MC], 20 October 2015, § 153; Koprivnikar v. Slovenia, 24 January 2017, § 45),* this statement being also valid for Article 22 of the Constitution of the Republic of Moldova [9, p.16].

So, law enforcement in a state governed by the rule of law must keep in mind two essential rules: 1. to interpret criminal law strictly; 2. prohibit analogy to the disadvantage of the accused [7].

Returning to the ECtHR's jurisprudence in criminal matters, we note the moment when the Moldovan legislator must take a proper attitude to these errors of criminal law to avoid a possible condemnation against the Republic of Moldova at the ECtHR. Moreover, the judiciary will always be at a standstill when it comes back to the application of criminal law. The quality of the law in a state governed by the rule of law plays one of the most important roles [19].

The law, as the guarantor of society, must meet the quality standard [4]. The law must be known by its recipients. Everyone must have information on the legal rules applied in a specific situation. Thus, the use of too vague and meaningless terms in the interpretation of the law will lead to its incompatibility with the clarity requirements of European standards [18].

Conclusions. In the present paper, we support the idea that the law as the guarantor of society must meet the conditions of a quality standard. The guarantee contained in Article 7 of the ECHR "*No punishment without law*" occupies a pre-eminent place in the system of protection of the ECHR, but also in the law system of the states. It represents the principle of the legality of crimes and punishments *(nullum crimen sine lege, nullum poena sine lege)* at global level. In any legal system, no matter how perfect the law may be in terms of clarity, it must be legally interpreted correctly. In the interpretation of criminal law, account will always be taken of aspects that are ambiguous in nature, being related to certain changes in situations.

The Republic of Moldova is one of the most condemnable states in the world before the ECtHR, in terms of serious violations of the fundamental rights of citizens, but exclusively of Article 7 of the Convention. This is due to the incorrect criminalisation of criminal offences and the erroneous and unfavourable application of criminal penalties to its own citizens.

Another aspect emphasised in this research is the presence of vague legislative regulations in the Criminal Code, which are likely to mislead the litigants. Even though the Constitutional Court has declared unconstitutional a number of provisions lacking predictability, the legislator has not so far amended the legal framework to exclude these loopholes in absolutely all the criminal provisions of the Criminal Code. In this respect, the referrals have not been made, but the legality of the incriminations remains affected, because the criminal rules are unclear and lack predictability. Consequently, the person cannot adapt his behaviour to the facts, as long as he does not even know their extent and proportions.

In other words, this raises many questions for the citizens of modern states governed by the rule of law, and sentencing individuals under these provisions would seriously violate fundamental human rights in terms of Article 7 of the ECHR, situations found countless times in the case law of the European Court.

It is up to the Moldovan legislator to take appropriate action against these errors in the criminal law in order to avoid a possible conviction against the Republic of Moldova at the ECHR. Moreover, the judiciary will always be at a standstill when it comes back to the application of criminal law. By way of a *lege ferenda* it is proposed to exclude all the phrases: "*other serious offences*", "*other acts*", "*other particularly serious offences*" from the Criminal Code of the Republic of Moldova, which generates total confusion in the application of criminal law.

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VICTIMS OF SERIAL KILLERS: CHARACTERISTICS AND FACTORS WITH INCREASED RISK OF VICTIMIZATION

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Summary

Serial killers are individuals who commit multiple homicides or other serious offenses repeatedly and premeditatedly. The analysis of the victims of these criminals reveals certain characteristics and factors that increase the likelihood of becoming targets of these criminals.

Victims of serial killers are often vulnerable people, selected according to certain characteristics and factors that make them more vulnerable. These characteristics may include gender, age, employment, socio-economic status, lifestyle and family situation. For example, many serial killers choose victims who are young, vulnerable and socially isolated, such as prostitutes or homeless people whose characteristics and circumstances make them more likely to become targets for these serial killers. Increased risk factors for victimization include the presence of personal vulnerability factors such as mental or physical health problems, substance addiction, lack of social support or previous traumatic experiences. Serial killers may also take advantage of victimization opportunities created by circumstantial factors such as geographical location, a victim's predictable routines or lack of safety precautions. It is important to understand that no person deserves to become the victim of a serial killer and that the responsibility for criminal actions rests entirely with the criminal. Nevertheless, recognising the characteristics and risk factors associated with victimization can help to develop effective strategies to prevent and protect potential victims. These strategies may include improving social and psychological support systems, raising public awareness and strengthening community safety measures.

Keywords: serial killers, victim, risk factors, community safety.

Introduction. In the context of modern societies, preventing and combating crime are some fundamental aspects of ensuring the safety and well-being of communities. Crime can have a devastating impact on individuals, families and society as a whole, undermining the foundations of a harmonious and equitable life. From street crime and domestic violence to sophisticated cybercrime, transnational terrorism and serial crime, the spectrum of crime is vast and complex. Crime issues are diverse and deeply rooted in the social and economic fabric of communities. Socio-economic inequality, lack of access to education and equitable economic opportunities, and mental health problems all contribute to the increased vulnerability of individuals and groups to anti-social and illegal behaviors. In addition to that, easy access to dangerous weapons, interpersonal conflicts and political instability can only fuel those cycles of violence and crime.

That said, there are numerous solutions and prospects for tackling this complex challenge. Investing in education and economic development, reforming the criminal justice system to promote fairness and social reintegration of offenders, fostering safe communities and using modern technology to prevent and investigate crime are just some of the potential approaches [5]. Ultimately, preventing and fighting crime is not just the responsibility of authorities or law enforcement institutions, but of society as a whole. Through collective efforts and the continuous commitment of individuals, communities and governments, we can build a safer and more prosperous

environment for all members of our society.

The purpose of the study concerning victims of serial killers is to better analyze and understand the characteristics of these victims and the factors that put them at increased risk of becoming targets of serial killers. By examining these aspects, researchers and applied forensics professionals aim to improve the approach to the prevention and detection of these crimes, as well as the management of crisis situations in which serial crime victims may be involved.

Discussions and results obtained. The results of studies and research conducted to analyse victims of serial killers provide a deeper understanding of the characteristics and risk factors that are associated with victimization in such cases. These studies have uncovered the following types of victimization:

– *random vs selective*, some cases of serial crime involve victims deliberately selected by the perpetrator, while others involve victims chosen arbitrarily;

– *group-specific vs random*, serial killers sometimes choose their victims based on certain traits or characteristics, such as gender, age, ethnicity or employment;

– *hidden vs exposed*, some cases involve victims chosen because they are vulnerable and easily accessible, while others involve victims who are openly approached and exposed in public places [1].

Victim characteristics. Victims of serial killers come from various social, economic and demographic backgrounds. Nevertheless, there are some common trends and characteristics found among these victims. These characteristics include social vulnerability, fragility, availability and accessibility, isolation or lack of support, specific physical or demographic characteristics, thus victims of serial killers include: young people, women, homeless people or those working in at-risk industries such as prostitution or sexual services.

Jack Levin, an American sociologist and criminologist known for his research on crime and violence, states in his book "The Will to Kill: Making Sense of Senseless Murder" (2006), "the characteristics of victims can influence how they are perceived and treated by serial killers, who often choose their victims based on certain traits or vulnerabilities". The author also explores aspects of criminal and psychological behavior of offenders, including selection and victimization [2].

Personal risk factors. Studies have identified a number of personal risk factors that increase a person's vulnerability towards serial killers. These factors include mental or physical health problems, substance abuse, previous traumatic experiences or lack of social and family support networks. Among serial killers who choose their victims from the ranks of the vulnerable, there are some notorious examples in history. One of these is Jeffrey Dahmer, also known as "The Milwaukee Cannibal" or "The Milwaukee Monster". Dahmer chose his victims primarily from the LGBTQ+ and POC communities, who were less likely to be reported missing by authorities. He was convicted of killing at least 17 men and boys between 1978 and 1991. Another example is Ted Bundy, who chose his victims mainly amongst young female students or those who were similar in appearance to his ex-girlfriend. Bundy also used these women's inexperience and vulnerability to lure them into his trap. He killed at least 30 people, although the actual number is likely to be much higher [3].

Circumstantial factors. Apart from personal factors, there are also circumstantial factors that can contribute to the risk of victimization. These include the geographical location of the victim, predictable life routines and exposure to dangerous environments or situations such as interactions with strangers or a lack of proper security measures. One example is Israel Keyes, a serial killer who chose his victims from various locations in the United States. He was very meticulous in planning his murders, choosing victims who were alone and had predictable routines, such as women leaving clubs or bus stops unaccompanied. Keyes even went to remote locations to find victims and avoided leaving any detectable pattern in his behavior [4].

The results of these studies are essential for the development of effective strategies to prevent and protect potential victims of serial killers. Improving social and psychological support systems, raising public awareness and strengthening community safety measures are just some of

the approaches needed to tackle this complex problem. It is also important to promote public education and awareness of the risks and warning signs associated with serial crime. By addressing this problem in a holistic and collaborative way, it can help reduce the number of victims of serial crime and protect communities as a whole.

Victims of serial killers vary depending on how each individual killer operates, but generally include a wide range of individuals from different demographic and social backgrounds. Here are some of the types of people who might become victims of serial killers:

– *vulnerable people*, these include homeless people, young people who ran away from home or those with mental health problems. Serial killers may target these groups because they are more likely to be overlooked and rarely are reported missing.

– *prostitutes*, are sometimes targets for serial killers because they can be more easily lured into dangerous situations and are often seen as "irrelevant people" in society.

– *isolated people*, these may include people who live alone, who have no family, who have very few friends, who are not often in contact with others. Serial killers may target these people because they are less likely to be reported missing.

– *couples*, in some cases, serial killers may target couples, attacking them while they are in their car or in secluded places.

– *people with certain physical or demographic characteristics*, sometimes serial killers have certain preferences regarding their victims such as age, gender, ethnicity or other physical characteristics.

– *young people and children*, sadly, young people and children can also become victims of serial killers because they are more vulnerable and are easier to manipulate.

– *people with predictable routines*, people who have a predictable routine can be targets for serial killers, as they can stalk and attack when they are least protected.

These are just a few examples that serial killers can choose any type of victim depending on their particular method and motivation [9].

The way in which serial killer victims are picked up can vary depending on the tactics and specific behavior of each killer. However, there are some common strategies that some killers use to target and lure victims:

Selection, serial killers may have certain preferences regarding their victims, such as age, gender, ethnicity or other physical characteristics. They may target certain vulnerable groups or people who are less likely to be reported missing.

Observation and tracking, many serial killers choose their victims by observing and following them regularly. They can study their daily routines, frequented places and habits so they can choose the right time to attack without being detected.

Manipulation and luring, some serial killers may use manipulative and coercive tactics to lure their victims into a position where they are vulnerable. These tactics may include promises of help, job offers or other forms of enticement.

Using authority or position of power, some serial killers, such as those who are members of law enforcement or in positions of authority, may use their position to manipulate and control victims. They may take advantage of public trust in their institutions to hide their true identity and intentions.

Threats or direct physical violence, in some cases, serial killers may use threats of direct physical violence to control their victims and force them to cooperate. This may include kidnapping, assault or other forms of coercive violence.

It is important to note that there is no single template for how serial killer victims are picked and the methods and procedures used can vary depending on the unique personality, motives and circumstances of each killer.

Victims of those who go on to commit serial murder are often subjected to extreme trauma

and are at risk of very serious consequences, including a potential loss of life. Once abducted, these victims may experience a range of conditions and experiences, including *captivity* – some victims are being held captive for long periods of time before being killed. They can be subjected to inhumane conditions and severe physical and psychological abuse during this period. Here are some notorious examples: Ted Bundy was one of the most notorious serial killers in history, killing at least 30 women in the 1970s. He used to approach his victims under the pretext that he needed help and then kidnap and kill them. Some of his victims were held captive for long periods of time before being killed [6]. Gary Ridgway, also known as the Green River Killer, killed at least 49 women in Washington, USA between 1982 and 1998. Many of his victims were prostitutes, whom he approached and then abducted, killed and dumped their bodies in the Green River. Some of these women were held captive for extended periods of time before being killed [7]. These are just a few examples, and the experiences of these victims were certainly terrifying and traumatic. The ability of these maniacs to hold their victims captive for long periods of time demonstrates their extremely dangerous and deranged level of criminal behavior.

The exact statistics vary depending on the sources and methods of data collection, but in general, the rate of survival of victims of serial killers is quite low. Most serial killers are known for their violent mode in which they operate and the way they select and attack their victims. This means that the chances of survival for their victims are low, especially if the killer has a clear pattern of behavior and is experienced in their actions [8].

However, there are also some rare instances when victims manage to escape or are rescued during an attack. Sometimes this is due to accidental factors or the intervention of third parties. It is also possible that some cases of serial killings may go undetected or unreported, and some victims may remain unknown or unidentified. These victims typically experience states of *fear and anxiety*, the lives of serial killer victims turn into constant anxiety and fear of being stalked or attacked again. These feelings can persist even after they have escaped captivity and can have a profound impact on their subsequent quality of life. Victims can also suffer *physical and psychological trauma* – if they manage to escape or are released, victims can suffer severe physical and emotional trauma from the abuse they have experienced. They may need intensive medical care and support from mental health professionals to recover their health and address the trauma. A major problem these victims face is that of *stigma and discrimination* – victims who are left alive may face stigma and discrimination from society or the community as a result of their experience. They may be treated with suspicion or distrust by others and may find it difficult to rebuild their lives and regain a sense of normalcy. The rehabilitation of these victims requires *counseling and ongoing support* – the recovery process for victims of serial killers can be long and difficult. They may need ongoing support from mental health professionals as well as support from family, friends and the community to regain their stability and rebuild their lives [10].

It is crucial that society provides adequate resources and support for these vulnerable victims, such as quality medical and psychological care, social support services and legal resources to help them cope with their trauma and rebuild their lives.

Conclusions. In conclusion, the victims of serial killers represent a complex aspect of contemporary society. Understanding the characteristics and factors that increase the risk of victimization is crucial for the prevention and combating of these crimes. By analyzing the detailed profiles of victims and the factors that contribute to their exposure to risk, we can develop effective strategies to protect vulnerable individuals and reduce the number of victims of serial killers.

It is evident that the victims of serial killers come from a variety of backgrounds and social contexts, but certain common traits, such as vulnerability, social isolation, or substance dependence, can increase the likelihood of becoming targets for these criminals. Additionally, a lack of awareness of the dangers and modus operandi of serial killers can contribute to individuals' exposure to risk.

High-risk factors for victimization include social isolation, lack of familial or community support, poverty, substance dependence, and other personal or social vulnerabilities. Furthermore, some serial killers may specifically target certain victim groups, such as women, children, or individuals with particular occupations or lifestyles.

In light of these findings, it is essential to promote public awareness and education about the warning signs of criminal behavior and ways to protect against these threats. Collaboration between authorities, communities, and non-governmental organizations is crucial for the early identification and intervention in cases of victimization, as well as for ensuring a robust support network for survivors.

Ultimately, preventing victimization and protecting vulnerable individuals requires concerted efforts at the individual, community, and societal levels to counteract negative influences and promote a safe environment for all members of society.

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ATTRIBUTIONS OF THE HEAD OF THE CRIMINAL INVESTIGATION BODY REGARDING ENSURING COMPLIANCE WITH THE TERM FOR EXAMINATION OF NOTIFICATIONS ABOUT THE COMMISSION OF CRIMES

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Summary

The principle of legality in criminal proceedings requires that any judicial body cannot initiate procedural activity without a report, therefore criminal prosecution bodies and courts begin their activity only after being notified through one of the methods specified in art. 262 of the Code of Criminal Procedure.

Notifying the competent authorities about the commission of an illegal act obliges the notified body to respect the set of guarantees enjoyed by each participant in the criminal process, ensuring a procedural balance of the rights and interests of each participant.

Thus, notifying the criminal prosecution body is informing about the commission of a criminal act, which the criminal prosecution body is obliged to register according to legal norms and only after that to carry out procedural actions.

Keywords: report, reasonable deadline, criminal prosecution body, leader of the criminal prosecution body.

Introduction. From the moment the criminal prosecution body is notified, the criminal process is considered to have begun, during which the participants in the process benefit from certain guarantees, including the examination of the report within a reasonable deadline.

The principle of respecting the reasonable deadline of the criminal process represents an element of applying the right to a fair trial. According to this principle, criminal prosecution bodies and courts have the obligation to ensure the resolution of criminal cases within a reasonable deadline [5, para. 78].

Procedural expediency involves stopping the excessive extension of criminal prosecution and trial proceedings over time, which can cause some harm in achieving the goal of justice and, to a greater extent, violate the rights of the subjects of the process [4, p. 52].

Thus, expediency and promptness in the activity of establishing offenses, as well as identifying the perpetrators in the shortest possible time, are important aspects that are likely to satisfy public opinion, which is outraged by the commission of the respective offenses [1, p. 18].

At the same time, in ensuring the expediency of criminal prosecution, there is a danger of affecting the rights and freedoms of other participants in the criminal process; therefore, the criminal prosecution body or the court examining criminal cases will identify that procedural balance that would allow for the overall assurance of the parties to the process.

A similar opinion was also expressed by the ECtHR, emphasizing the speed of judicial procedures while also consecrating the more general principle of good administration of justice. It must find a fair balance between the various aspects of this fundamental requirement [3].

In this context, it should be noted that ensuring the reasonable deadline of criminal prosecution cannot justify limiting other rights provided for in Article 6 of the European Convention

on Human Rights. Therefore, competent authorities should not, under the pretext of respecting reasonable deadlines in criminal prosecution or in the phase of verifying reports, refuse to investigate the evidence necessary for a complete and correct resolution of the case, as this could violate certain rights of the participants in the criminal process.

Results obtained and discussions. The conduct of the criminal process requires the presence of certain individuals with specific procedural qualities who are summoned or who intervene on their own initiative in this procedural framework [2, p. 7].

A similar opinion was also expressed by the ECtHR, emphasizing the speed of judicial procedures while also consecrating the more general principle of good administration of justice. It must find a fair balance between the various aspects of this fundamental requirement.

In this context, it should be noted that ensuring the reasonable deadline of criminal prosecution cannot justify limiting other rights provided for in Article 6 of the European Convention on Human Rights. Therefore, competent authorities should not, under the pretext of respecting reasonable deadlines in criminal prosecution or in the phase of verifying reports, refuse to investigate the evidence necessary for a complete and correct resolution of the case, as this could violate certain rights of the participants in the criminal process.

The conduct of the criminal process requires the presence of certain individuals with specific procedural qualities who are summoned or who intervene on their own initiative in this procedural framework.

The head of the criminal prosecution body - an independent participant in the criminal process, to whom the criminal procedure code provides a wide range of procedural powers, with a managerial and monitoring character of the activity of the criminal prosecution officers under his subordination.

All managerial decisions aimed at respecting the reasonable deadline for examining the reports of the head of the prosecution body are dedicated to achieving well-defined goals, and their implementation in reality is anticipated by the identification of real objectives. The possibility of achieving these goals is determined by the fact that criminal procedural law, being a complex right involving a significant number of subjects, has sufficient human and material resources to achieve the proposed goals.

The managerial activity carried out by the subjects of criminal procedural law stems from the pre-established duties of international acts to which the Republic of Moldova is a party, constitutional norms, provisions of laws regulating their activities, internal organizational and operational regulations, etc.

The managerial role of the head of the prosecution body has also been mentioned in Order No. 201 of 30.06.2017 of the Ministry of Internal Affairs regarding the Approval of the Policeman's Career Guide; therefore, the following managerial activities are specific to them:

– Leads the subdivision's activities;

– Carries out planning, organization, coordination, monitoring, control, evaluation;

– Is directly responsible for the activities of the supervised subdivision, reporting directly to the superior;

– Possesses skills in planning, organization, coordination, monitoring, control, evaluation;

– Is responsible for tactical and operational decisions regarding the activities of the subdivision and the managed sector.

The managerial duties of the head of the prosecution body are carried out in relation to the subdivision they lead as well as to each individual criminal investigator. Information about crimes received by the competent authorities, depending on the form of receipt and examination procedure, is classified into two categories:

– Reports (Articles 262-264 of the Code of Criminal Procedure) about committed, prepared, or ongoing crimes, containing a description of the act and in accordance with the provisions of the

criminal procedure code, can serve as a basis for initiating criminal proceedings;

– Other information regarding crimes and incidents, complaints, anonymous reports, or other requests or communications about crimes that, according to the provisions of the criminal procedure code, cannot serve as a basis for initiating criminal proceedings but are subject to further scrutiny.

Reports on crimes are recorded in the Register of Reports on Crimes (Register No. 1), while other information on crimes and incidents is recorded in the Register of Other Information on Crimes and Incidents (Register No. 2), which are considered unique primary records [6].

The role of the head of the prosecution body in ensuring the reasonable deadline for examining reports is materialized through a set of duties regulated by the provisions of the criminal procedure code. To ensure the smooth conduct of the criminal process and to meet the reasonable deadline, reports, materials related to the commission of crimes, and criminal cases will be allocated within the prosecution section by the head of the prosecution body.

Upon receiving reports, materials related to the commission of crimes, and criminal cases, the head of the prosecution body will indicate on the received document in the section the person who will be responsible for examining it, as well as the date of designation of the criminal investigator. The deadline for examining reports on crimes is reasonable but cannot exceed 45 days from the date of registration.

Depending on the circumstances of the case resulting from the content of the report or finding document, the head of the prosecution body may set a deadline for examining the report or finding document shorter than the one specified in Article 274 of the Criminal Procedure Code of the Republic of Moldova. However, to ensure a qualitative and comprehensive examination of the reports or finding documents, the deadline for examination based on a reasoned report may be extended [7, p. 182].

The set deadline and the extended one must be reflected in the respective section of Register No. 1 by the collaborator of the guard unit. The decision of the head to extend the deadline for examining the report, which overall cannot exceed 45 days, directly influences the work of the criminal investigator and other individuals whose duties include verifying the information reflected in the report or finding document.

In addition to setting the deadline for examining reports, the head of the prosecution body, as a manager, also verifies whether the committed act falls within the jurisdiction of the prosecution body he leads. If it is apparent from the content of the report that the crime is not within the jurisdiction of the notified prosecution body, the criminal investigator is entitled to carry out urgent investigative actions and then transfer the case to the prosecutor to refer it to the competent prosecution body. In such a situation, the actions of the prosecution body are not subject to the provisions of Article 251(2) of the Criminal Procedure Code of the Republic of Moldova.

The criminal procedural legislation does not establish criteria for the head of the prosecution body to allocate criminal cases, reports, or materials to criminal investigators within the section. When allocating criminal cases, in order to comply with the reasonable deadline for examining reports or materials, the head of the prosecution body will take into account the following factors:

- the number of criminal cases, reports, or materials related to the commission of the crime under the responsibility of each criminal investigator;
- the complexity of the criminal cases under the responsibility of each criminal investigator, as well as the complexity of the case to be allocated;
- the professional experience of each criminal investigator;
- the level of professional training of each employee within the prosecution section;
- the professional performance results of the employees within the prosecution body;
- other circumstances that may affect the work of the criminal investigator (transfer to an-

other position, health status, incompatibility of the criminal investigator, etc.).

The managerial role of the head of the prosecution body in examining reports primarily involves setting the deadline for their examination and determining the criminal investigator or group of investigators responsible for reviewing the reports.

Moreover, in complex and/or large-scale criminal cases, in accordance with Article 256 and after informing the prosecutor, the head of the prosecution body may order the investigation to be conducted by multiple criminal investigators.

The main basis for creating a group of investigators is complex or large-scale cases. However, it is not clear by which criteria the head of the prosecution body will determine which cases are complex or large-scale. In our opinion, the group of investigators will be formed for criminal cases where a large number of investigative actions need to be carried out, such as in cases involving organized criminal groups, multiple offenses, a large number of participants in the process (suspects, witnesses, victims, etc.), or offenses committed in remote regions.

Establishing a group of criminal investigators for the investigation of complex or intricate criminal cases will allow for the simultaneous conduct of multiple investigative actions, prevent the violation of jurisdiction by criminal investigators, and contribute to meeting the reasonable deadline for the investigation.

Conclusion. Ensuring compliance with the reasonable deadline in the process of reviewing reports represents a managerial skill of the head of the prosecution body to plan and organize procedural activities within the prosecution body, ensuring procedural balance between the interests of each participant in the criminal process.

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LEGAL-CRIMINAL ANALYSIS OF ACTIONS OF ORGANISING OR LEADING MASS DISORDER

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Summary

Since the proclamation of the independence of the Republic of Moldova on 27 August 1991, the authorities responsible for the defense, maintenance and restoration of public order and security have undeniably evolved and made great progress. With social evolution, the number of interferences in social relations regarding public security and public order has increased. This raises the possibility of the crime of mass disorder. An analysis of existing judicial practice shows that, in most cases, perpetrators are convicted of organizing or directing mass disorder under Article 285 paragraph (1) of the Criminal Code.

Keywords: public order and security, interference, organisation, leadership, mass disorder etc.

Introduction. Crime is a dangerous social act which manifests itself in a harmful action or inaction and directly affects the social values protected by criminal law. In accordance with Article 14 paragraph (1) of the Criminal Code No. 985/2002, a crime is a harmful act (action or inaction) provided by the criminal law, committed with guilt and liable to criminal punishment [1]. It should be noted that, viewed as a single entity, the offence has a certain composition or, according to Article 52 paragraph (1) of the Criminal Code No. 985/2002, the offence is considered to consist of the totality of objective and subjective signs, established by the criminal law, which qualify a harmful act as a concrete offence [1]. Therefore, it is confirmed that one of the elements of the offence is the objective aspect, which constitutes the basic aspect according to which the full qualification of an illicit act is achieved. It is specified that the correct identification of the signs of the objective side is beneficial to the correct legal classification of the criminal act, including the identification and unbiased application of the criminal penalty.

Methods and materials applied. The following methods were used to analyze the topic: logical analysis and interpretation, which apply formal-legal and socio-legal methods of investigation. At the same time, the scientific basis of the research is based on various researches from the contents of criminal law textbooks, collections of conference materials, scientific articles, etc.

Discussions and results obtained. The objective side of a crime is the outward approach to wrongdoing and is a fundamental mark without whose existence it would be impossible to establish criminal liability. Moreover, in the very content of the criminal law, the legislator expressly regulates unlawful actions and the characteristics, in the presence of which the existence/non-existence of the criminal act is attested. The configuration of the objective side of the offence makes it possible to determine and profile the objective aspects of the unlawful acts, as well as their full qualification, on the basis of incriminating rules laid down by the criminal law.

Overall, the Romanian legal literature points out that the objective aspect, as a constituent element, is made up of all the conditions concerning the act of conduct required by law for the existence of the offence [7, p.76-78].

Author Alexandru Borodac argues that the objective aspect of the offense constitutes the external aspect of socially dangerous behavior, expressed through causing, provoking a danger, or causing damage to social relations [6, p. 97].

Following the analysis of the criminal law doctrinal aspects, it is concluded that the objective aspect is also called "the material element of the offence" and represents a set of necessary conditions, which are found in the content of the incriminating legal norm and reflect the type of behaviour of the person which is considered as an offence. In this context, an analysis of the characteristics of the structure of the objective side of the offence of mass disorder shows that the objective side of the offence is achieved through three distinct actions. It is specified that this paper will only analyze the objective aspect of the offence set out in Article 285 paragraph (2) of the Criminal Code, which materializes through illicit actions as follows.

The first action is materialized by the organization of mass riots, accompanied by: 1) application of violence against persons; 2) outbreak of riots, arson; 3) destruction of property; 4) application of firearms or other objects used as weapons; 5) violent or armed resistance to representatives of the authorities [1].

Brânză S. and Stati V. support the view that the organisation of mass disorder is expressed, as appropriate, by:

a) Preparation and planning of challenges to incite aggression of the masses of people;

b) Creating an atmosphere conducive to the use of violence against persons - pogroms, arson, destruction of property, use of firearms or other objects used as weapons or violent or armed resistance to representatives of the authorities;

c) Creating other conditions necessary for mass disorder [5, p.582].

The second action is carried out by conducting mass riots, accompanied by: 1) application of violence against persons; 2) outbreak of riots, arson; 3) destruction of property; 4) application of firearms or other objects used as weapons; 5) violent or armed resistance to representatives of the authorities [1].

Brânză S. and Stati V. are of the opinion that the management of mass disorders implies, as appropriate:

(a) Directing masses of people to commit mass disorder;

b) Coordinating the actions of participants in mass disorder;

c) Directing the masses of people directly to use violence against persons, to commit riots, arson, destruction of property, to use firearms or other objects used as weapons, or to resist representatives of the authorities violently or with arms etc. [5, p.582].

In the light of the above, it is found that for the offence to be legally punishable under Article 285 paragraph (1) of the Criminal Code, it is sufficient that the perpetrator commits one of the two unlawful acts. At the same time, in order for the acts of organising or directing mass disorder to be of a consummated nature, it is necessary for those acts to be accompanied by the use of violence against persons, the outbreak of riots, arson, the destruction of property, the use of firearms or other objects used as weapons, or violent or armed resistance to representatives of the authorities. *A contrario*, in the event of failure to commit the accompanying actions mentioned above, the unlawful act is to be classified as preparation of the offence of mass disorder, pursuant to Articles 26, and Art. 285 paragraph (2) and (3) of the Criminal Code. It is specified that the meanings in question are also applicable to the standard version of the offence stipulated in Article 285 paragraph (1) of the Criminal Code.

The obligatory actions that accompany the basic criminal act are of major importance in the process of its legal classification, which is why it is judicious to explain their significance.

With reference to the text "use of violence against persons", there is some confusion, but the text does not expressly state the type of violence used, and in practice it leaves room for extensive interpretation. In this regard, it is noted that there are two types of violence: non-dangerous and dangerous to life or health of the person. Therefore, due to the lack of clarity regarding the text

mentioned, there is also a lack of clarity in the process of legal classification of the crime of mass disorder or, the vacuum regarding the limits of violence applied, creates difficulties for the prosecuting body or, where appropriate, the court in the process of classifying the crime [8, p.127].

In the same vein, it is necessary to explain the term "pogrom", which comes from the Russian word "громить", translating as to destroy, to destroy by burning, with the meaning of massacre, carnage. In the light of the above, a pogrom is understood to mean a spontaneous group attack involving beatings, harassment, damage to or devastation of property/ goods, means of transport, buildings, etc.

The term 'arson' is used to refer to the deliberate ignition of a fire by means of a physico-chemical process using various substances.

Destruction of property refers to the partial or total destruction of material objects which, due to their poor condition, can no longer be used for their original purpose.

The wording "application of firearms or other objects used as weapons" has a multiple connotation, respectively it is important to distinguish between the application of firearms and other objects used as weapons.

Thus, according to Article 2 of Law No. 130/2012 on the regime of weapons and ammunition for civilian use, a firearm means a portable barreled weapon that can throw, is designed to throw or can be converted to throw buckshot, a bullet or a projectile by the action of a propellant. An article is considered to be capable of being converted to expel a shot, bullet or projectile by the action of propellant if it has the appearance of a firearm and, by virtue of its construction or the material from which it is made, is capable of being so converted. Similarly, the mentioned article of the Law No. 130/2012 explains the application of firearm as the execution of firing with a firearm [2].

Under the notion of "other objects used as weapons," consideration is given to objects with which the victim has been or could have been caused serious harm to life or health (knives, including kitchen knives, clubs, axes, teeth, etc.), as well as objects intended for the temporary disorientation of the victim, such as revolvers, tear gas canisters, and other devices with neutralizing toxic gases. It is specified that the term also encompasses the action of using dogs or other trained animals that pose a danger to the life or health of the victim, or with the threat of their use [3].

In this circumstance, one of the optional signs of the objective side arises, namely the means used to achieve the criminal purpose, in this case the firearm or other objects used as a weapon. In the case of armed resistance to the law enforcement authorities, the weapon is considered to be the only means of committing the criminal act. In substance, mass disorder consists of actions by a crowd of people who need to achieve a common objective, whatever that objective may be. They take the form of the devastation of people's property, the blocking ~~of~~ the activities of public or, where appropriate, private institutions, including the impairment of their functionality and the obstruction of the movement of public and/or private means of transport.

The offence set out in Article 285 paragraph (1) of the Criminal Code has a formal component and is consummated from the moment of organising or conducting the mass disorder, provided that the accompanying activities described above are present. Investigating the legal-criminal theory in tangent with the jurisprudential aspects of the causal link or the so-called causal relationship, it is pointed out that the causal link constitutes the cause-effect contact between the harmful act and the immediate consequence. Therefore, in the case of the unlawful act under consideration, the causal link cannot be established, since it is of a formal nature and the harmful consequences do not necessarily have to occur, thus making it impossible to determine intent.

In researching the practical-judicial aspects, a case was identified which was qualified, on the basis of Article 285 paragraph (1) of the Criminal Code: "On 06.09.2015, from 14:00, P.G. by mutual agreement and by agreement with T.M. being on X street, mun. Chisinau, in the immediate vicinity of the Prosecutor General's Office, acting with direct intent, aware of his actions, with the aim of destabilizing the situation, organized and led mass disorder, in which several persons participat-

ed, including by applying violence and violent resistance to the representatives of the authorities, expressed by pushing and shoving and applying blows with objects on them, used as a weapon. [...] *Witness X states that the defendant T.M. behaved aggressively, instigating people to violence, trying to break the cordon of employees to enter the Prosecutor's Office. Witness X states that the defendant T.M. was the organiser. Everyone listened to him, [...] and by his behavior, it was observed that he was an influential person. What he said, they did. [...]The witness states that the defendant T.M. instigated violence. [...]T.M. pleads guilty to committing the offence under Article 285 para. (1) of the Criminal Code and under these laws he is sentenced to imprisonment for a term of 4 (four) years" [4]. The selected case clearly nuances certain actions of organizing or leading mass disorder by the defendant. In the case, the modalities by which the crime is committed are highlighted: instigation to violence, by breaking the cordon of employees of public authorities, shouting of violent actions to be taken, manifestation of aggressive and influential behavior, generating provocation among the participants.*

Conclusions. The analysis of the objective aspect of the offense of mass disorder emphasizes the three standard variants of its commission. The detailed examination of the first standard variant of the offense, in cases of organizing or leading mass disorders, highlights the fundamental characteristics upon which the perpetrator's actions can be qualified under Article 285 (1) of the Penal Code.

An unclear and vaguely regulated aspect in Article 285 (1) of the Penal Code is the accompanying action of the unlawful act, namely – the application of violence against persons. However, the legislator does not expressly establish the limits of violence, which creates confusion and discrepancies in the qualification process. It is impossible to ignore this legislative gap, as in the absence of one of the accompanying actions, the unlawful act cannot be qualified under Article 285 (1) of the Penal Code, and in such cases, the activity of the law enforcement body is illusory and questionable. For this reason, it is appropriate and relevant to develop and promote a draft law proposal to exclude any erroneous interpretations of legal norms. Furthermore, strengthening a doctrinal basis regarding the qualification of acts of mass disorder will contribute to facilitating the activity of the law enforcement body. By studying various hypotheses and clarifications, the law enforcement body will ensure the rejection of speculations regarding legal qualifications, including inaccurate legal classifications.

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EX-OFFICIO REVIEW OF ILLEGALLY OBTAINED EVIDENCE: A DETAILED ANALYSIS CONDUCTED BY THE PROSECUTOR

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Summary

The prosecutor is the primary representative of the state in all aspects related to the investigation and prosecution of crimes, and their performance influences every decision made in criminal cases brought before the courts. Prosecutors have the obligation to evaluate evidence to ensure that it has been obtained correctly and should not attempt to introduce inadmissible evidence. The prosecutor may refuse to admit certain evidence in the proceedings if they believe it was not obtained in accordance with legal provisions. Therefore, the control carried out by the prosecutor is of particular importance for the correct conduct of subsequent stages of examining the criminal case.

Keywords: fair trial, prosecutor, evidence, ex-officio review, exclusion of evidence.

Introduction. At the core of a prosecutor's work lies a simple but profound mission – to seek justice. Prosecutors are responsible for ensuring that a case has been investigated in accordance with the law, whether it involves supporting a conviction, dropping charges, or mediating between parties. The goal is to uncover the truth and apply fair punishments. Essentially, a prosecutor's role is to maintain balance and ensure that justice is served.

Case investigation, as the initial phase of the criminal process, aims to gather the necessary evidence regarding the existence of crimes, the identification of perpetrators, and the determination of their responsibility, in order to establish whether or not it is appropriate to refer the case to the court. Before the criminal case is sent to court, the prosecutor plays an essential role in evaluating the evidence collected from police investigations. The ex-officio review of illegally obtained evidence refers to the examination of evidence that has been obtained illegally or in violation of legal procedures. This is not just a superficial look, it involves a meticulous examination of witness statements, forensic findings, and any other relevant data. The purpose is to determine if there is a solid basis to believe that a crime has been committed and by whom.

Research purpose. Issues related to procedural decision-making regarding the exclusion of evidence by the prosecutor at the final stage of the investigation remain a widely discussed topic among practitioners and legal scholars. The prominent argument for exclusion of evidence during the criminal investigation phase is the protection of individual rights and the integrity of the judicial process. On the other hand, some practitioners argue that strict adherence to admissibility criteria during the criminal investigation phase may lead to the exclusion of relevant and useful evidence which help to establish the truth in a case.

The main purpose of this article is to analyze control performed by the prosecutors in verifying evidence, analysing the reasoning considered to admit or exclude the evidence already gathered, and the legal consequences of these procedural decisions.

Methods and materials applied. In preparing this article, the analytical method was used, researching domestic and occidental theoretical sources, national legislation, as well as international instruments, including the standards of the ECHR and the UN on human rights and free-

doms. Several scientific investigation methods were also applied: logical method, historical method, comparative analysis method, etc.

Discussion and results obtained. In exercising control over compliance with legal norms in carrying out criminal investigation activities and special investigative activities within the criminal process, prosecutors have the obligation to ensure compliance with international norms and the Criminal Procedure Code regarding the inadmissibility of using evidence obtained contrary to these norms, as well as to pay increased attention to the quality and proper documentation of evidence.

The spectrum of evidence that must be excluded due to being obtained illegally or improperly varies from state to state and is subject to different legal tests of admissibility. In modern criminal law, evidence obtained through illegal methods that seriously violate human rights is excluded [13, p.41].

In this regard, prosecutors must carefully analyze the evidence proposed to determine if it was obtained illegally or improperly. They should also consider the possibility of refusing to use evidence that there are reasonable grounds to believe was obtained through illegal or inappropriate methods. In particular, when these methods constitute a serious violation of human rights, such as when evidence is obtained through torture or inhumane or degrading treatment, prosecutors should not use the evidence against anyone, except in proceedings against those who used such methods. For example, according to Article 15 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, each state party shall ensure that any statement established to have been obtained through torture shall not be invoked as evidence in any proceedings, except when used against a person accused of torture to establish that a statement was indeed made [4].

Ex-officio review in light of Article 6 of the ECHR. Prosecutors, as essential agents of justice administration, must be vigilant in identifying human rights violations throughout the entire process of obtaining evidence and take appropriate measures against those responsible for committing them. Prosecutors are also required to respect the rule of fair trial inspired by Article 6 of the ECHR, incorporated into the procedural legislation of the Republic of Moldova, with the responsibility to ensure the respect of the "equality of arms" principle during the criminal investigation stage, including regarding criminal evidence.

In order to determine if the procedures as a whole were fair, the ECtHR usually assesses whether the right to defence was respected. In particular, the Court examines whether the party was given the opportunity to challenge the authenticity of the evidence and to object to its use. Often, the ECtHR does not consider whether the defence and, in some situations, even the judges have access to the necessary information regarding the evidence collection process to effectively evaluate its legality. In this context, respecting the right to challenge evidence is essential. Investigations can span over months or even years, which is why it is crucial to examine the legality of evidence at the early stages of proceedings, especially in cases of serious violations of the right to defence [14, p.42].

At the same time, when examining the evidence administered during the criminal investigation, the prosecutor is required to take into account the principles formulated by the jurisprudence of the European Court of Human Rights (ECtHR): the nature of the established violation, in case it concerns a violation of another right under the Convention; whether the person was given the opportunity to challenge the authenticity of the evidence and to object to their use; the quality of the evidence and the circumstances in which they were obtained and whether these circumstances cast doubt on their reliability or accuracy; whether the evidence in question is decisive for the outcome of the criminal case.

Regarding the examination of the alleged violation, the test described above has been applied in the following cases: evidence used in the proceedings was obtained in violation of the right to defence [7; 9]; the use of evidence obtained in violation of Article 8 of the ECHR, including cases where the Court found a violation of this provision [1, para. 69-83]; the admission of material evidence obtained as a result of an act qualified as inhuman treatment, in violation of Article

3 of the ECHR, but without torture, the prosecutor drawing attention to the fact that the use of such evidence always raises serious issues regarding the fairness of the proceedings [8, para.85].

It is worth noting that when the ECtHR evaluates cases based on the criteria mentioned above, especially with regard to the last criterion (the significance of the evidence for the outcome of the examination of the case), the Court has emphasized that the importance of additional evidence beyond the issue in dispute varies depending on the specific circumstances of the case. When the evidence is highly convincing and there is no doubt about their reliability, the requirement for additional evidence is reduced. This principle is supported by legal precedents such as Khan v. the United Kingdom [10, para.34] and Prade v. Germany [12, para.40].

Ex-officio review through the lens of national legislation. Although Article 6 of the ECHR does not establish any norms regarding the admissibility of evidence, guaranteeing only the right to a fair trial in general, these guarantees are provided at the national level. In accordance with Article 94(1) of the Criminal Procedure Code, in criminal proceedings, evidence obtained through the following means cannot be admitted as evidence and therefore must be excluded from the case, cannot be presented in court, and cannot form the basis of the judgment or other court decisions: through the use of violence, threats, or other means of coercion; by violating the rights and freedoms of the individual; by violating the defense rights of the suspect, accused, defendant, injured party, witness; by violating the right to interpretation and translation for participants in the process; by a person who is not authorized to take procedural actions in the criminal case, except for supervisory bodies and other parties in the process as provided for in Article 93(3); by a person who clearly falls under the grounds for recusal; from a source that cannot be verified in court; through methods that contradict scientific provisions; with essential violations by the law enforcement body or investigating officer of the provisions of this code; from a person who cannot recognize the document or object in question, cannot confirm its authenticity, origin, or the circumstances of its receipt; by provoking, facilitating, or encouraging a person to commit a crime; by promising or providing an advantage not permitted by law [3].

In the Republic of Moldova, evidence can be declared inadmissible and excluded from the criminal case, both during the criminal investigation phase and at the trial stage. To understand the process of ex officio evidence, review during the criminal investigation phase, a brief introduction to the procedural obligations of the prosecutor must be conducted. Thus, in accordance with Article 52 para.(1) letter 6) of the Criminal Procedure Code, during the criminal investigation, the prosecutor, within the limits of their material and territorial competence, verifies the quality of the evidence administered [4].

Before the criminal case is brought to court, the prosecutor plays an essential role in evaluating the evidence gathered from police investigations. This process is not just a simple analysis; it involves a careful examination of witness statements, forensic findings, and other relevant data. The goal is to determine if there is enough evidence to support that a crime has been committed and by whom. This national obligation is regulated by the provisions of Art. 290 para.(1) Criminal Procedure Code, according to which the prosecutor, within a maximum of 15 days from receiving the case file sent by the criminal investigation body, checks the case materials and procedural actions taken, pronouncing on them. If the prosecutor finds evidence obtained contrary to the provisions of this Code and in violation of the rights of the suspect, accused, by reasoned order, excludes this evidence from the case file [3].

According to these legal provisions, the prosecutor has the authority to "purify" the criminal case by eliminating illegally obtained evidence. The evidence is to be eliminated directly, as stated in point 52) of the Constitutional Court Decision of inadmissibility of referral No. 56g/2018 regarding the unconstitutionality exception of certain provisions of Article 94 para.(1) Criminal Procedure Code. The constitutional jurisdiction authority stating that inadmissible evidence that has been classified as such during the criminal investigation phase is to be excluded from the case

file, with its physical removal from its content.

Additionally, the prosecutor oversees the actions taken during the criminal investigation and deals with the examination of complaints against certain actions of the criminal investigation body. According to Art.298 para.(1) Criminal Procedure Code, the suspect, accused, their legal representative, defense counsel, and their representatives, as well as other persons whose rights and legitimate interests have been infringed by these bodies, can file a complaint against the actions, inactions, and acts of the criminal investigation body and the specialized investigative activity body [3], and the prosecutor will examine the complaint within 15 days.

The examination of complaints by the prosecutor, submitted by the parties to the proceedings and other individuals, which signal violations of rights within the criminal procedure, represents an important means of control for identifying and preventing legal violations and errors committed by the law enforcement authorities and those conducting special investigative activities. If, during the examination of the complaint, the prosecutor finds that evidence was obtained in violation of legal provisions, he shall order the exclusion of the evidence from the criminal case materials through a reasoned order.

However, the physical exclusion of tainted evidence from the criminal file does not mean that it cannot be used at all and cannot have a certain influence on the outcome of the case examination. The prosecutor may decide to what extent this evidence can be used against the person who committed the violations. Thus, in accordance with the provisions of Art.274 para.(2) of the Code of Criminal Procedure, in case ... the prosecutor takes action regarding the initiation of criminal proceedings, he draws up a report recording the findings regarding the detected offense, then, by order, orders the initiation of criminal proceedings [3]. As a result, excluded evidence can be consulted and used to demonstrate guilt.

At the same time, excluded evidence can be used in a subsequent stage of the procedure. For example, it is possible that the criminal investigation may not use illegally obtained evidence to incriminate the commission of the harmful act, but the defendant may use that evidence to support their defence.

The prosecutor may exclude evidence ex-officio or at the request of one of the parties. However, here we need to bring to attention another nuance of the criminal process: certain specific activities carried out during the criminal investigation are confidential and conducted in secret, justified by the necessity of operational efficiency in collecting evidence and taking necessary measures for identifying and holding criminals accountable. Therefore, during the investigative phase, the prosecutor may make a reasoned decision to deny the defense access to case materials if, in the prosecutor's opinion, this could prejudice the success of the pre-trial investigation. In accordance with Article 212 paragraph (1) of the Code of Criminal Procedure, the materials of the criminal investigation cannot be made public without the authorization of the person conducting the investigation and only to the extent that they consider it possible. Thus, only limited information is provided to the defence, namely the defence only has access to written procedural actions directly related to the accused, such as searches, seizures, etc. According to the provisions of Article 293 paragraph (1) of Criminal Procedure Code, the defence party can only become acquainted with all the materials of the criminal case after the completion of the investigation. The mentioned article stipulates that only after the prosecutor verifies the case materials and adopts one of the solutions provided in Article 291, the prosecutor informs the accused, their legal representative, and their defence counsel about the completion of the investigation, the place, and the deadline for them to become acquainted with the materials of the investigation [3].

Therefore, during the investigative phase, when the police present the accumulated evidence to the leading prosecutor of the investigation, the prosecutor's discretion comes into play.

We can affirm that the prosecutor's discretion is inherent in every stage of the criminal investigation process, such as ordering special investigative measures, searches, however, at the

moment when the prosecutor decides to exclude illegally obtained evidence, discretion is of paramount importance. The reason for the prosecutor's discretion to exclude illegally obtained evidence is that without it, there would be no effective means to deter the police from obtaining evidence through abusive practices. Furthermore, by accepting such evidence, the prosecutor participates in and reinforces the wrongful actions of the police.

From the analysis above, it results that the activity regarding the prosecutor's discretion to exclude such evidence focuses on the analysis of evidence obtained through the lens of Article 94 paragraph (1) of the Code of Criminal Procedure and areas related to evidence collection reflected in the case law of the European Court of Human Rights, such as evidence collection through entrapment, violation of the right to defense, etc. It is highlighted that the verification of evidence implies a great responsibility on the part of the prosecutor, as if the prosecutor does not notice the disregard or violation of legal provisions and orders the referral of the criminal case to the trial court, it may lead to the case being sent back for further criminal investigation or in the most serious case, the acquittal of the person who is truly guilty of committing the offense. In relation to the conclusions drawn after the verification of evidence, the prosecutor may decide to return the case for further criminal investigation while respecting procedural guarantees, and may also rule on the exclusion of evidence as appropriate. Therefore, the importance of conducting ex-officio control of the evidence accumulated by the prosecutor and excluding them during the criminal investigation phase is as follows: firstly, this aims to prevent the trial judge from being subconsciously influenced by tainted evidence when deciding on the guilt of the accused. Secondly, the procedure prevents the parties involved from having evidence removed from the case after it has already been sent to the trial court. Thirdly, procedural economy is pursued so that the parties know in advance if certain procedural acts are valid and can be used as evidence, thus avoiding delays in the process where the trial judge would have to address a pre-existing nullity, compromising the entire case.

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Conclusions. Prosecutors have the primary responsibility of overseeing the investigation and deciding on the inclusion of information obtained as evidence presented in the trial. On the one hand, prosecutor must ensure that sufficient evidence is gathered for the identification, accusation, and ultimately, the conviction of the perpetrator. On the other hand, prosecutor must ensure that the investigation is conducted in accordance with the law and that the evidence included

in the criminal case file is admissible. As demonstrated above, timely exclusion of illegal evidence during the preliminary investigation phase can prevent the integration of illegal evidence so deeply into the criminal case file that their negative effect becomes impossible to completely eliminate in subsequent proceedings. Additionally, it may become more difficult to use illegal evidence to obtain new derivative evidence: during the trial, even if the original statement is excluded, it is often impossible to trace what other evidence was obtained as a result of it.

We can conclude that by conducting ex-officio control and imposing limits on the use of evidence obtained through violations, adhering to procedural standards for evidence collection, prosecutor ensures that accused persons are treated correctly, ensuring their right to a fair trial.

Recommendations. Prosecutors have the obligation to evaluate evidence to ensure that it has been obtained correctly and should not attempt to introduce inadmissible evidence. The prosecutor may refuse to admit certain evidence in the trial if they believe it was not obtained in accordance with legal provisions. However, through our research, we have found that there is currently no publicly available internal guide on the procedure for prosecutors to review evidence. In our opinion, developing such a guide with guidelines or factors to consider in excluding evidence would be extremely useful in achieving uniformity in national practice.

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REFLECTIONS ON THE CONCEPT OF PATRIMONIAL CRIME

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Summary

The concept of property crime is complex and particularly relevant in contemporary society. Property crime refers to offenses that involve violating or damaging others' material or financial assets. Examples include theft, fraud, robbery, corruption, money laundering, and online fraud.

This article aims to analyze and discuss property crime, focusing on its main characteristics, motivations, and societal impact. It will explore various forms of property crime, emphasizing their evolution and adaptation in today's technological context. Additionally, the article will propose interdisciplinary approaches to prevent and combat this type of crime.

Keywords: concept, reflections, analyze, crime, fraud, criminal offence, patrimony.

Introduction. The concept of property crime refers to those offenses that target the property, i.e., the material or financial goods of a person, organization, or institution. This type of crime encompasses a wide range of illegal acts, from theft, robbery, scamming, and fraud, to money laundering, embezzlement, and destruction. Property crime represents one of the most common and persistent forms of crime, having a significant impact both individually and socially and economically. It is crucial for authorities to take effective measures to prevent and combat this type of crime through tougher laws, increasing public awareness, and good collaboration between justice institutions. Furthermore, continuous education of citizens regarding the prevention of these crimes and the protection of their property against theft or scams is essential.

Property is a legal concept that expresses the set of rights and obligations of a person as a universality, as an independent solution from the goods that it comprises at one point, the property, whether we see it as an entity closely linked to the person of the subject or as a universality of rights, there is mandatory at any subject of law (even when the liabilities exceed the assets), it can never be alienated, but is transmitted only at the death of the subject when its will, which gives it the character of unity, extinguishes.

The content of the property includes tangible and intangible goods, consumable or fungible goods, movable or immovable, main or accessory, etc., that is everything that represents powers, faculties, abilities of the subject viewed from the perspective of economic values.

Acts committed against property have always been criminalized throughout history.

In the slave era, theft, robbery, and pillage were severely punished; other forms of property infringement, such as deception, abuse of trust, and fraudulent management, which were consid-

ered as civil delicts, were less known. Alongside contracts, quasi-contracts, quasi-delicts, and law appear as sources of obligations and delicts. Delicts constitute the oldest source of obligations. The definition of delict has varied over time [4, p.17].

Usually, petty thefts were punished with whipping, however, at the third theft, the death penalty was applied. If the thefts were severe, the death penalty was applied from the first theft. This severity of punishments shows the frequency of offenses and their seriousness; against such acts, the dominion was forced to resort to the most inhumane punishments.

Modern criminal law systems, although eliminating some of the previous exaggerations, have maintained a fairly severe regime for certain forms of criminal activity directed against property; at the same time, they have expanded the framework of criminalization to other specific acts of economic relations in modern society.

Methods and materials applied. In the article, a wide range of research methods was used to ensure a thorough and comprehensive analysis of the phenomenon. The methods applied, including analysis, synthesis, deduction, and the systemic method, have allowed the breakdown and reassembly of the elements of the study to evaluate the interactions and effects of property crime within society. These methodological approaches contribute to the theoretical foundation of the study and provide a solid basis for the development of effective strategies to combat this type of crime.

Discussions and results obtained. The study of property crime is essential in criminology for several reasons. One reason is the understanding of the phenomenon. By studying property crime, criminologists can understand the motives and factors underlying this type of crime. This understanding is crucial for developing effective prevention and combat strategies. Another reason would be identifying the profile of offenders: The analysis of property crime can help identify the profile of offenders and the "modus operandi" used by them. This can be useful in developing criminal profiles and facilitating criminal investigations. Assessing the social and economic impact is also an essential reason. The study of property crime allows for the assessment of the social and economic impact of these crimes on individuals, communities, and society as a whole. This assessment is important for developing public policies and resources needed to prevent and manage these crimes.

The development and implementation of public policies. Criminology contributes to the development and implementation of public policies aimed at preventing and controlling property crime.

These policies may include legislative measures, education and awareness programs, improvements to the criminal justice system, and international collaboration. As well as promoting justice and fairness, is a reason not to be overlooked. By studying and understanding the phenomenon of property crime, criminologists can contribute to promoting justice and fairness in the criminal justice system. This may involve identifying and correcting inequities in law enforcement and ensuring equal access to justice for all citizens [2].

Overall, the study of property crime plays a crucial role in criminology, contributing to the understanding, prevention, and combating of this type of offense to ensure a safer and more equitable society. The main objectives regarding the reflections on the concept of property crime could be the following:

1. Clarifying and defining the concept of property crime for readers who may be less familiar with this term. This could include an explanation of the different types of property crimes and the ways in which they can affect individuals and society.

2. Exploring the causes and factors that contribute to the emergence and perpetuation of property crime. This could include discussions about the motives of offenders, as well as about the social, economic, and cultural influences that may play a role in this phenomenon.

3. Examining the social and economic impact of property crime on individuals, communi-

ties, and society as a whole. This could involve discussions about the financial costs, the emotional and psychological effects, as well as the erosion of trust in institutions and systems.

4. Identifying prevention and combating strategies – addressing effective strategies for preventing and combating property crime. This could include discussions about legislative measures, education and awareness programs, improvements to the criminal justice system, and international collaboration in combating cross-border crimes.

5. Critical perspectives and future research directions – providing critical perspectives on how the concept of property crime is addressed in the specialized literature and public policy. It could also include suggestions for future research directions to improve understanding and management of this phenomenon in contemporary society [3].

By addressing these objectives, we could provide a comprehensive and informative analysis of the concept of property crime, contributing to a deeper understanding of this phenomenon and the development of more effective strategies for its prevention and combating.

Thus, property crime is a complex phenomenon, and its characteristics can vary depending on the specific type of offense and the context in which they occur. However, there are some general characteristics that are often associated with this type of offense, namely:

– *Material or financial damage*. Property crime often involves damage to the material or financial goods of others. This can include theft, deception, scamming, robbery, and other similar offenses that result in financial losses for victims.

– *Intent for personal gain*. Property offenses are often motivated by the desire to obtain financial or material benefits for the offender. These can be committed by individuals or groups who aim to obtain illegal profits or to exploit others for their own purposes.

– *Identity theft and fraud*. In the digital age, offenders can commit property crimes through the internet, including identity theft and online fraud. These crimes often involve the fraudulent use of personal or financial information of others for illegal purposes.

– *Manipulation and deception*. Property crime can involve the manipulation and deception of victims to gain access to their goods or to induce them to make financial transactions or provide confidential information.

– *The use of force or threat*. In some cases, offenders may resort to the use of force or threats to commit property crimes, such as robbery or bank robberies. These offenses can be more violent and can have more serious consequences for victims.

– *Planning and organization*. Some property crimes can be planned and committed by organized criminal groups, which use sophisticated resources and strategies to obtain illegal profits.

– *Impact on victims and society*. Property crime can have devastating consequences for victims, who may suffer significant financial and emotional losses. It can also undermine trust in institutions and have a negative impact on the well-being and safety of society as a whole.

Thus, property crime represents a wide spectrum of offenses that target the material or financial goods of a person or entity, motivated by obtaining personal gain through illegal means. This type of crime incorporates various methods and techniques, from simple theft and deception to complex frauds and the use of technology for identity theft and online fraud. Characterized by its adaptability to the digital environment, property crime often involves informational manipulation, using personal or financial data for fraudulent purposes.

These criminal offenses not only cause immediate financial losses to victims, but can also have profound destabilizing effects at an emotional level, affecting their trust and sense of security. Beyond the individual impact, the consequences are also felt at a societal level, where the loss of trust in institutions and financial security systems can erode social cohesion and undermine the economic foundation of communities.

Property crime is distinguished by meticulous planning and organization, often being the work of well-structured criminal groups that use complex resources and sophisticated strategies

to maximize illegal profits. This aspect highlights the need for proactive and well-coordinated approaches to the prevention and combating of this type of crime, involving close collaborations between law enforcement agencies, the private sector, and communities.

This analysis offers an exhaustive perspective on the phenomenon of property crime, highlighting the diversity and significant impact of these criminal offenses on society. Property crime manifests through multiple forms of offenses, which vary based on the nature of the acts and the methods of commission.

Theft, one of the most widespread forms of property crime, involves the unauthorized appropriation of another person's material or financial goods without their consent, with the intention of wrongful appropriation. This includes variants such as burglary, vehicle theft, and shoplifting. In Romanian legislation, theft is detailed in Title II "Offenses against Property," Chapter I, and is described in three forms: simple theft [1, Art. 228], aggravated theft [1, Art. 229], and theft with intent to use [1, Art. 230].

Deception, also known as scamming, involves misleading a person by presenting a false fact as true or vice versa, with the goal of obtaining an unjust material or financial benefit. This can include banking scams, insurance fraud, and document forgery. The offense of deception is criminalized under the same title and chapter as theft, under Title II "Offenses against Property," Chapter III [1, art. 244], reflecting the variety of fraud methods.

Robbery is a complex offense involving theft committed through violence or threats and is addressed in legislation under the same title as theft and deception. It can have serious consequences for victims, combining elements of theft with violence [1, Art. 233, 234].

Cyber fraud has become an increasingly common form of property crime in the digital age, involving the use of the internet and information technologies to commit offenses such as phishing, credit card fraud, and identity scams. This offense is criminalized in Chapter IV "Frauds committed through information systems and electronic payment means", under Title II "Offenses against Property" [1, Art. 249].

Corruption [6], which involves the abusive use of a position of power or authority to obtain illegal benefits, includes bribery, embezzlement of public funds, and influence peddling. These forms of corruption are detailed under Title V "Corruption and Service Offenses", Chapter I "Corruption Offenses" [1, Art. 289-294].

Embezzlement describes the misappropriation or fraudulent handling of goods or funds by persons who control or have authority over them, such as administrators or accountants, and is criminalized under the same title as corruption, under Title V "Corruption and Service Offenses", Chapter II "Service Offenses" [1, Art. 295].

Money laundering, an offense involving the transformation of illegally obtained money into legal money to conceal its illegal origin, is addressed in the General Part of the Criminal Code, illustrating the complexity and seriousness of this offense in the modern context. It is detailed in Title III, Chapter V, Section 2 [1, Art. 75], highlighting the mitigating and aggravating circumstances of offenses.

Therefore, the diversity of property offenses underscores the need for a multidimensional approach to combating this type of crime, considering the variety of methods of commission and the severity of their impact on society.

These are just a few examples of types of property crime, and the list can be much longer and more diverse depending on the specific context and technological and social evolution. The profile of offenders involved in property crime can be diverse and may vary depending on the specific type of offense and circumstances.

In the study of property crime, certain characteristics and motivations can be identified that influence criminal behavior, each having significant implications for understanding and preventing this type of crime.

A common factor is the opportunity and difficult financial circumstances. Many offenders are motivated by the possibility of quickly obtaining financial benefits, often in the context of personal economic challenges, such as unemployment or accumulated debts. Offenses such as theft and deception are often perceived as temporary solutions to overcome financial problems or to achieve a higher standard of living.

Beyond economic motivations, the desire for power and control is another strong motivator. Some offenders are driven by the need to dominate or to exercise control over others, seeing property crimes as ways to assert or consolidate their social influence. This type of motivation can be linked to deep psychological aspects, involving the desire for authority and recognition.

Also, some personal justifications or distorted beliefs can play a significant role in rationalizing illegal behaviors. Offenders may adopt subjective ideologies that distort notions of justice or property, allowing them to justify their actions and minimize the seriousness of their consequences. These beliefs are often reinforced by rationalizations that make illegal behavior seem acceptable in the eyes of the offender.

Another element that can influence the commission of property offenses is the attraction to risk and adventure. For some offenders, the challenge and adrenaline associated with planning and executing an offense are the real rewards, more than the material gains. This orientation towards risk can contribute to the repetition of offenses, each episode being seen as an opportunity to experience new limits of risky behavior.

Finally, social and environmental issues, such as negative influences from family, friends, or community, can have a decisive impact on the decision to commit property crimes. Cultural and social factors that normalize or even glorify certain forms of illegal behavior can facilitate the adoption of these behavioral patterns by individuals.

Therefore, understanding these complex motivations is essential for developing effective prevention and intervention strategies in the field of property crime, addressing both immediate and deep sociopsychological causes.

It is important to emphasize that the profile and motivations of offenders can vary depending on individual circumstances and the specific context of each case. Additionally, addressing property crime requires a deep understanding of the factors underlying these offenses and how they can be prevented and managed in society.

Property crime, by its diverse nature and the impact it has, profoundly affects both victims and society as a whole, having financial, emotional, social, and economic repercussions. The impact of this type of crime is manifested through substantial financial losses for victims, which can include the theft of money, valuable goods, or financial fraud. These losses have a direct effect on the victims' well-being, limiting their ability to meet basic needs or achieve financial goals [5].

Beyond material losses, the experience of property crime trauma brings significant stress and emotional trauma. Victims may suffer from persistent feelings of fear, anger, guilt, or despair, effects that can severely harm the quality of life and personal relationships. Moreover, these crimes can involve the violation of private life, such as in cases of identity theft, where offenders access and use sensitive personal information. This can erode trust in institutions or people, affecting the social and professional relationships of the victims.

The psychological impact of property crime also extends to the community, generating fear, anxiety, and a sense of insecurity among residents. These feelings can weaken social cohesion and mutual trust, negatively affecting the public perception of community safety.

Finally, the social and economic costs of property crime are significant for society as a whole. They include expenses related to criminal investigations, judicial proceedings, detention and social reintegration of offenders, as well as costs associated with recovery and repair of damages suffered by victims. These costs reflect not only material expenses, but also the broader impact on social and economic resources, highlighting the need for effective prevention and intervention

strategies in the field of property crime.

Overall, the impact of property crime on victims and society is considerable and requires comprehensive and coordinated approaches for its prevention and management. It is important to focus both on preventing property crimes and ensuring adequate support and justice for their victims.

As detailed above, property crime has a profound impact on both victims and society as a whole. The impact of property crimes on victims is profound and multidimensional, affecting them materially and financially, as well as emotionally and psychologically. Victims of these crimes face considerable financial losses when money, valuable goods, and other material resources are taken through theft, deception, or other forms of illegal activities. These losses can significantly destabilize the financial and personal security of the affected individuals.

Beyond the material aspect, the experience of being a victim of property crime brings increased levels of stress and anxiety. Affected individuals can become extremely concerned about personal security and the protection of their property, a state of unease that has the potential to persist over the long term.

The emotional impact is also significant. Victims may suffer from fear, anger, guilt, and shame, emotions that can compromise their ability to recover from the incident. These feelings can negatively affect the quality of life and lead to difficulties in maintaining or developing healthy interpersonal relationships.

Moreover, victims of property crimes must invest considerable time and energy in managing the consequences of the crime. These include reporting the incident to authorities, cooperating with ongoing investigations, and efforts to recover losses, processes that can be both stressful and time-consuming.

In addition, some crimes, such as identity theft, involve the violation of personal privacy, affecting victims' trust in other people and institutions. This aspect can have lasting effects, altering how victims interact with the financial system and technology, and can lead to their withdrawal from activities that involve the disclosure of personal information.

Thus, property crimes not only affect the financial resources of victims, but can also profoundly and persistently alter their well-being, personal safety, and trust in society. These realities underline the importance of effective prevention strategies and support for victims, aiming to minimize the impact of this type of crime.

Property crime involves a series of extended repercussions on society, affecting not only individuals, but the economic structure and social cohesion as a whole. This form of crime generates significant economic costs, which include not only direct financial losses resulting from fraud, but also the expenses associated with criminal investigations and efforts to prevent and combat these crimes. These costs reflect the substantial resources allocated to maintaining financial and legal integrity within communities.

More than the economic impact, property crime erodes public trust in state institutions and law enforcement mechanisms. The decline in this trust can weaken social cohesion and diminish the general sense of safety and security within the community. This, in turn, can have long-lasting effects on the social and economic stability of society.

In the business environment, property crimes have a particular impact through direct financial losses, reputation damage, and declining consumer confidence. These effects can lead to considerable economic instability, increasing the risk of bankruptcy for affected businesses and inhibiting long-term economic development.

Victims of property crimes often face not only material loss, but also social stigmatization. Society can sometimes judge victims for being exposed to crimes, thus intensifying their emotional suffering and complicating the recovery process. This type of social reaction can exacerbate the isolation of victims and inhibit the pursuit of necessary support for recovery.

Thus, the extended impact of property crime underscores the need for integrated approaches, which should include not only preventive and punitive measures, but also support strategies for victims and the restoration of trust in public institutions and the business environment. These efforts are essential to maintain social and economic stability in the face of challenges posed by property crime.

Overall, the impact of property crime is complex and can profoundly affect both individuals and society as a whole. It is important to focus on preventing this type of crime and ensuring adequate support for its victims.

In conclusion, property crime constitutes a serious threat to the stability and prosperity of our society. This type of crime involves various offenses focused on the theft or damage of an individual's or institution's material goods, ranging from simple theft to complex frauds and corruption. Its effects are felt both at the individual and collective levels, disrupting the economic and emotional security of communities. To effectively combat this phenomenon, it is essential to understand the mechanisms and underlying causes that fuel it and to develop appropriate prevention and intervention strategies.

Joint efforts, including collaboration between governments, non-governmental organizations, the private sector, and civil society, are crucial for reducing the impact of this type of crime. In our research, we have collected and analyzed data from official sources and detailed interviews with police officers, crime-fighting experts, and criminalists, aiming to provide a deep understanding and viable solutions.

Our goal is to contribute to effective strategies that support the fight against property crime. Proposed measures may include strengthening community policing, enhancing collaboration between law enforcement institutions, public education and awareness campaigns, increasing penalties for offenders, and promoting effective and transparent justice.

Our article is based on a rigorous scientific methodology and aims to provide valuable information for decision-makers and professionals in the field of crime and criminal justice. By publishing our findings, we hope to contribute to efforts to reduce the incidence of property crime, not just in Romania, but also internationally, thereby promoting a safer and fairer society for all its members.

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THE ISSUE OF QUALIFYING THE THEFT OF WEAPONS OR AMMUNITION

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Summary

The legal classification of an act, seen as a process aimed at determining and establishing the correspondence between the signs of the harmful act committed and the signs of the constitutive elements of the offense, plays an important role in the criminal process, making it possible to further organize the course of action of the subjects empowered with the enforcement of criminal law.

Therefore, the subject of research of this article is the issue of qualifying the theft of weapons or ammunition as a separate modality of committing the offense provided for in Article 290 of the Criminal Code of the Republic of Moldova, as well as identifying all the signs that allow the delimitation of this act from other general legal norms describing the modalities of theft committed through robbery, theft, robbery, extortion, blackmail, fraud, pickpocketing, embezzlement, etc.

Keywords: theft, acquisition, weapon, ammunition, qualification, criminal offence.

Introduction. Despite the tightening of measures taken by the state authorities to strengthen control over the illegal trafficking of weapons or ammunition for civilian use, statistical data confirm that the number of crimes in this field is not decreasing, but on the contrary, it has an annual increase of approximately 2-3%.

Thus, analyzing the national judicial practice of the Republic of Moldova, we find that the coercive measures taken by the state aimed at preventing, combating and supervising the circulation and illegal handling of weapons or ammunition, consist of incriminating and punishing both contraventional for the violation of the commercialization and/or foreign trade, and respectively for the violation of the rules of keeping, holding, transporting, carrying and using or applying lethal and non-lethal weapons and/or related ammunition, or unauthorized weapons [3], as well as criminal liability for illegal manipulation of weapons, incrimination norms provided in Articles 290 and 291 of the Criminal Code of the Republic of Moldova..

Therefore, examining the data regarding the judicial practice of the courts, namely analyzing the convictions for the last 5 years, it can be confirmed that 95% of the illegal handling of weapons is committed by the fact of their possession, i.e. the illegal carrying and/or keeping of weapons or ammunition for civilian use, followed by their procurement and theft in the amount of 3%, and respectively 2% refers to those convictions based on Art. 290 of the Criminal Code of the Republic of Moldova, according to which the perpetrator was held criminally liable for the manufacture or repair or illegal sale of weapons or ammunition.

Therefore, the low number of sentences that confirm the commission of the crime through one of the alternative modalities consisting in the procurement, manufacture, repair, illegal trade or theft of weapons or ammunition, is not only due to the fact that criminals do not resort to such an external manifestation of criminal intentions, but also to the fact that, usually, the authorities responsible for enforcing the criminal law avoid specifying how a weapon came into the posses-

sion of the perpetrator, preferring to mention other legal aspects such as keeping or carrying, a fact for which the national crime index targeting trafficking illicit weapons has a very high latency.

In turn, this approach may influence practitioners to focus more on the two classic illegal actions of keeping and carrying, respectively, and to neglect other possibilities of illegal activity related to firearms (except the smoothbore hunting gun) or ammunition one of which as mentioned is theft.

According to some hypotheses of the national doctrinaires [1, p. 836], the theft of weapons as a factual way of entering the possession of an asset, constitutes a concrete form of the illegal procurement of this illicit object, which is why this does not need to be listed in the provision of the incrimination norm. while Russian authors Ignatova A. and Lebedeva V. have different views according to which the theft of weapons represents a separate and exceptional factual means, which cannot be included and carried out through the prism of the procurement action, which is a separate action from the illegal obtaining of the weapon and thus from the commission of the offense provided for in Article 290 of the Criminal Code of the Republic of Moldova. In other words, the illegal procurement of the weapon represents the set of activities for obtaining the criminal objects, through various methods, for permanent or temporary use, except for acquisition through theft, which forms a separate component of the offense [10, p. 896].

In this sense, namely with the aim of avoiding the incorrect and erroneous understanding of the content of the incrimination norm according to the will of the legislator, as well as to carry out a legal framework of the prejudicial act, the national legislation defines the action of procuring weapons as that way of obtaining them through different methods (purchase, receiving as a gift, release on account of the debt, exchange, finding, etc.) without the authorization of the competent bodies [4], and the act of stealing weapons as those illegal actions aimed directly at their seizure and their subsequent possession by the perpetrator or a third person through various methods, namely: theft, robbery, blackmail, swindle, pickpocketing, extortion, embezzlement, etc.

In this context, in order to provide clarity and clarification regarding the notion of "theft" in light of the modalities mentioned above, reference shall be made to doctrinal explanations and normative approaches regarding the definition of the same term in the context of crimes against property that are committed through theft.

Considering that the provision of the incrimination norm provided for in Article 290 of the Criminal Code of the Republic of Moldova does not expressly indicate the methods by which weapons or ammunition destined for civilian use can be directly stolen, this needs to be deduced through the use of systematic interpretation and logical interpretation, thus allowing the clarification of the legal norm's meaning based on inductive and deductive reasoning taking into account its connections with other legal norms, as well as based on the laws of formal logic and the argumentation system on which it relies.

For the purposes of the criminal law, therefore, the unlawful and gratuitous taking of property from the possession of another person, which has caused actual damage to the property of that person, carried out for the purpose of appropriation, is deemed to be theft [5].

Relevant is also the notion given by Ivanova I.V., who in his work "*Theft and extortion of firearms, ammunition, explosive substances and explosive devices*", defines the term "*theft*" in relation to the means of acquiring firearms or ammunition as the illegal and gratuitous taking of firearms or ammunition lawfully or unlawfully in the possession of another person, for oneself or for another person, committed for the purpose of greed and causing injury [9, p.14].

A similar notion is subsequently offered by the author Brînza S., for whom theft is the unlawful and gratuitous taking of movable property from the possession of another, which has caused actual damage to his property, committed for greed [2, p.49].

Based on these premises, we consider that the implementation and adoption by the national legislator of the single concept defining the term of theft, constitute the essential moment that allows the theoretical and practical solution of the problems of criminal law that arise with the

beginning of the criminal process and are exhausted with the qualification of the facts and the correct identification of the existing criminal component..

In view of the above, it can be concluded that the theft of firearms, with the exception of smoothbore weapons or ammunition for civilian use, can be carried out through the following forms of stealing: theft (Article 186 of the Criminal Code), robbery (Article 187), extortion (Article 188), fraud (Article 190), embezzlement or appropriation of another person's property (Article 191), pickpocketing (Article 192).

Therefore, compared to the theft of foreign property carried out in the above ways, the social danger of the stealin of a firearm is determined not by the material value of the stolen weapon, but by the real possibility of the perpetrator to use it later in the commission of a crime, which is why this offence is not part of the chapter of offences against personal property, but against security and public order, social relations that are endangered by the existence of the regime of illegal circulation of weapons or ammunition.

This in turn makes it possible to distinguish the theft of weapons or ammunition from other offences committed by theft and in this respect we refer to extortion/ burglary.

Extortion is defined as an attack with the aim of appropriating the property of another person and is a crime consummated at the moment of the commission of the offence, without the need to carry it through to completion or even to the preparatory stage. The question therefore arises as to how the offence of a person who, with the sole purpose and direct intent, attacks a person with the aim of taking a weapon should be qualified?

In this sense, the doctrine is based on the hypothesis according to which the theft of weapons, regardless of the factual modality or the degree of violence inflicted on the victim, needs to be qualified by virtue of the qualification rule of Article 116 paragraph (2) of the Criminal Code of the Republic of Moldova, namely on the basis of the competition between the general and special rule as well as depending on the specificity of the material object, that is, the object of the material world on which the criminal activity is directed. Therefore, in the case of burglary, the offender aims at endangering the relations of defence of the right of possession of movable property by stealing and taking possession of the owner's property, whereas in the case of theft of firearms or ammunition, the offender endangers social relations with regard to the protection of public security, conditioned by the legal circulation of firearms or ammunition.

Therefore, we can observe the different classification of the theft of firearms, with the except for smooth-bore hunting weapons or ammunition within an attack committed against a person, with the aim of stealing property, accompanied by the use of dangerous violence to the life or health of the person or the threat of applying such violence committed with direct and indirect intent. Thus, in the presence of circumstances where the volitional factor in guilt is expressed in the form of the desire for harmful consequences to occur, namely the desire to expressly steal firearms or ammunition by applying or threatening to apply dangerous violence, the act must be classified only in accordance with Article 290 of the Criminal Code of the Republic of Moldova, considering that the assault on the firearm as the material object of the offense also entails an assault on the security of the state, whereas the theft of firearms in the context of a robbery where the perpetrator acts with indirect intent or negligence under both its forms needs to be classified in accordance with Article 188 of the Criminal Code of the Republic of Moldova, and if, in certain cases, after the theft, the perpetrator illegally possesses, repairs, or sells the stolen firearm or ammunition, their actions need to be classified based on the real concurrence of offenses, namely Article 188 and Article 290 of the Criminal Code of the Republic of Moldova.

Another qualification issue that needs to be clarified is the delimitation of the theft of firearms or ammunition depending on the normative way of committing it. In this sense, we come up with that clarification according to which it is necessary to differentiate the facts based on the prejudicial degree, considering that the theft/ stolen can be carried out by deception or abuse

of trust, it can be committed covertly, openly, openly with the application of violence harmless, openly with the application or threat of application of dangerous violence or may even take place from the possession of the owner of weapons or ammunition that are entrusted to the perpetrator in administration.

In this context, we point out that although the theft of weapons or ammunition can indeed be committed in a wide range of factual ways, the most common way is to steal them covertly.

Therefore, an example of openly stealing a firearm was found in the following case: *Mr. Druță Petru, on 02.09.2019, at about 08.30 a.m., following prior agreement and together with* Șapovalov *Ion Petru with whom they assigned their roles from the beginning, being in the house belonging to the . *****, located in the town. *****str. ***** Floreşti, out of personal interest, intentionally, with the purpose of stealing another person's property, using the fact that he was not noticed by anyone, he secretly stole two pistols, one of the model "MP 446 Viking" with the price of 7000 lei and the second of the model "Walther P22" with the price of 8000 MDL, belonging to Mr. ******* [7].

Thus, the actions in this case are to be qualified based on Art. 290 para. (1) Criminal Code of the Republic of Moldova and by no means under base on Art. 186 para. (1) Criminal Code or on the basis of the concurrence of these offences.

The question also arises in judicial practice as to the qualification of offences relating to the carrying, keeping, procuring, manufacturing, repairing, unlawfully trading, including the theft of non-functioning firearms and assemblies or sub-assemblies of firearms or ammunition or parts thereof. On the assumption of the above, we agree with the author Serbinov A. who in his work supports the idea that in the hypothesis of procurement, keeping, carrying, illegal trade and theft, as well as negligent keeping or transmission to other persons, the material object of the offence is the functional firearm, while in the situation of repair and manufacture, not the functional firearm, but the non-functional firearm or the useful parts of a non-functional firearm or the raw material used in the manufacture of firearms, appear as the material object [8, p.56].

Regarding the theft of assemblies or subassemblies of firearms or ammunition or their parts, law enforcement authorities in the investigation process will have the primary task of identifying the perpetrator's intent. Although the provision of Article 290 of the Criminal Code of the Republic of Moldova establishes criminal liability for illegal manipulations with firearms, viewed as those portable firearms with a barrel that can throw, is designed to throw, or can be transformed to throw bullets, a bullet, or a projectile by the action of a propulsion fuel [6], it will still be taken into account that if the intent to seize firearms or ammunition has been established, or only assemblies or subassemblies thereof have been stolen, or parts that would make it possible to manufacture firearms or ammunition capable of functioning normally, the perpetrator's actions need to be classified as a consummated offense, as all the elements of the offense provided for in Article 290 of the Criminal Code of the Republic of Moldova are present.

Moreover, the stealing of component parts of weapons or ammunition which, according to their intended purpose, cannot be used separately, but the perpetrator intends to subsequently make or has begun to make the missing parts in order to bring them to a final state, or the removal of the smooth-bore firearm for the purpose of modifying its external appearance in order to shoot the named ammunition shall be deemed to be an attempt to remove weapons or ammunition for civilian use, and the person who made the missing parts or modified the smooth-bore firearm shall be liable for the manufacture or repair of the weapons or ammunition

Another problem concerning the correct qualification of the acts of theft/ stolen is that, since these methods of obtaining weapons or ammunition are known, the legislator omitted to criminalize them in separate rules, given the fact that the penalty applied for any method of stealing under Art. 290 Criminal Code of the Republic of Moldova is one and the same, which is why the discrepancy between the amount of penalties applied for offences committed by stealing, especially those that are more serious offences, such as for example in the basic composition of rob-

bery Art.187 para. (1), within the framework of aggravated robbery, that is with the application of violence not dangerous to life or health or with the threat of such violence, Art.187 para. (2), letter e), or in the framework of assault committed against a person for the purpose of taking away weapons, accompanied by violence dangerous to the life or health of the assaulted person or by the threat to apply such violence Art.188 para. (1) of the Criminal Code, as well as other components of Chapter VI of the Criminal Code of the Republic of Moldova.

In this context, we stress our position that, in order to ensure effective prevention of illicit trafficking in arms and ammunition for civilian use, their stealing should be criminalised in a separate rule. Thus, since stealing is a distinct way of committing a crime, it cannot be included in the same criminal provision as carrying, keeping, procuring, manufacturing, repairing and selling firearms and ammunition, as the Russian author A.F. Sokolov also believes, who argues that stealing and extortion cannot be attributed to the category of illicit arms trafficking [11, p.18], because of the different specificities of all the methods used and the greater degree of damage caused.

Conclusions. Finally, we consider that the stealing of ammunition or firearms should not be included in the content of Article 290 of the Criminal Code of the Republic of Moldova, this is why we propose to exclude it from the existing rule of stealing as a way of committing the crime and to complete the Criminal Code with a new article, which would directly incriminate the crime of stealing and extortion of firearms and ammunition according to the legislative models of various foreign countries, where the legislator distinguishes the activities of manipulation with weapons, which in turn consists of "illicit trafficking", "stealing" and "extortion" of weapons or ammunition.

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SOME ASPECTS OF THE OBJECTIVE SIDE OF THE DESERTION CRIME

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Summary

For the correct qualification of the crime of desertion provided by the criminal legislation of the Republic of Moldova, it is necessary, not least, to establish the guilt of the perpetrator, his intention at the time of committing the act and the very actions taken by the perpetrator. The objective side represents the mandatory element that the deed of desertion must meet in order to constitute a crime. The actions taken by the perpetrator at the time of committing the crime of desertion show his intention to commit it, namely, to evade from performance of military service. Indeed, military discipline, i.e. the military's strict observance of the order and rules established by military laws and regulations, requires each soldier to be permanently present at the unit or service, in order to be able to carry out his duties according to the training program the fight. The absence of servicemen from the unit is an obvious proof of indiscipline, a flagrant violation of military duty. At the same time, such an act is likely to disturb the activity of the unit or the service, which must be carried out perfectly. To prevent the crime of desertion, it is important to identify the reasons and causes underlying its commission. By abandoning military service, deserters compromise national security and can thus affect the defense capacity of the state. Currently, an essential condition for ensuring state security consists in strict compliance with military regulations, legislation, and military discipline in order to prevent any foreign intervention on the territory of the Republic of Moldova.

Keywords: desertion, objective side, military service, national security, crime composition, actions, place, guilt, military discipline, military service, state security.

Introduction. The objective side of the offense is the component element of the offense that needs to be carefully analyzed in the process of qualifying the offense, considering the necessity of examining all aspects of the perpetrator's action/inaction. The objective side of the offense constitutes the element of the commission of the criminal act. In the specialized literature, the objective side of an offense refers to the totality of conditions required by the incriminating norm regarding the conduct act for the existence of the offense. Firstly, it is mentioned that only an action or inaction can affect a social relationship protected by criminal law. Our legislator chose to provide a definition of the concept of offense within Article 14 paragraph (1) of the Criminal Code. Thus, it is stated that, "an offense is an act (action or inaction) harmful, provided by criminal law, committed with guilt and punishable by criminal punishment". According to the provisions of the penal code regarding military offenses, we can deduce their legal definition as those offenses "provided by this code..., committed by persons performing military service by contract, on term, with reduced term, or as concentrated or mobilized reservists...", the general and special legal framework ap-

plicable to offenses committed by military personnel is also provided, the framework regulating offenses committed by military personnel, the acts constituting offenses, the applicable sanctions, and the procedure to be followed in case of finding the commission of an offense. Indeed, military discipline, meaning the strict adherence by military personnel to the order and rules established by military laws and regulations, requires each soldier to be constantly present at the unit or service in order to fulfill the tasks arising from the combat training program accurately. The absence of soldiers from the unit is clear evidence of indiscipline, a blatant violation of the military duty. At the same time, such an act is likely to disrupt the activity of the unit or service, an activity that must be carried out perfectly. Therefore, the legislator's position to criminalize, in Article 371 of the Criminal Code of the Republic of Moldova, the act of desertion is justified.

Discussions and results obtained. The offense of desertion is incriminated by the Criminal Code of the Republic of Moldova in Article 371 in a basic component and in two aggravating modalities as follows: "desertion, meaning the abandonment of the military unit, training center, or place of service in order to evade military service, concentration, or mobilization, as well as the failure to appear for the same reason at service or concentration or mobilization in cases of leave from the military unit or training center, assignment, transfer, return from a mission, from leave, or from a medical institution, committed by a soldier or reservist". In the theory of criminal law, the objective side of the offense, acting as the objective manifestation of guilt, is an external act of socially dangerous violation of the object protected by criminal law and is characterized by the same features for all components: action (action or inaction), consequence, causal relationship between action and consequence, as well as time, place, method, environment, instruments, and means of committing the offense, etc.

The objective side of the offense provided by Article 371 of the Criminal Code is realized through criminal acts of desertion, meaning the abandonment of the military unit, training center, or place of service in order to evade military service, mandatory military training within military service with a reduced term, or concentration, as well as the failure to appear, for the same reasons, at service or concentration in cases of leave from the military unit or training center, assignment, transfer, return from a mission, from leave, or from a medical institution. According to Article 56 of the Constitution of the Republic of Moldova, "devotion to the Motherland is sacred". Citizens entrusted with public functions, as well as soldiers, are responsible for fulfilling their obligations with devotion. The defense of the Motherland, according to Article 57 of the Constitution of the Republic of Moldova, "is a right and a sacred duty of every citizen". Strict adherence to the order of military service is the main condition for ensuring the combat readiness of the Armed Forces. In the case of desertion, military order and discipline, as basic premises of the country's defense capability, are violated. The objective side represents one of the basic elements of the offense component. Thus, "the constitutive signs of the objective side are mandatory for holding the perpetrator criminally liable, establishing the degree of social danger of the perpetrator, the act, and the legal classification of the offense committed".

Desertion is a continuous offense as defined in Article 29 paragraph (1) of the Criminal Code of the Republic of Moldova. Criminal activity begins from the moment when "the perpetrator has willfully left the military unit or the place of military service or from the moment when the soldier has not appeared at the appointed time and is considered consummated from the moment of detention or voluntary presentation of the soldier to the military unit, the place of military service, or the competent authorities".

Therefore, according to Article 29 of the Criminal Code, an offense is considered continuous when it is characterized by the uninterrupted commission, for an undetermined period, of criminal activity. In the case of a continuous offense, there is no plurality of offenses. The continuous offense is consummated from the moment the criminal activity ceases or due to events that prevent this activity. Thus, the moment of consummation emerges from the provisions of Article 29

paragraph (2) of the Criminal Code. The given offense has a formal component and is considered consummated from the moment of committing the criminal, constitutional, and military act of defending the homeland.

The offense of desertion implies a prolonged absence beyond the term established by law, and only if the perpetrator benefited from freedom of will and action, having the possibility to choose between returning to the military unit, the training center, or the place of service and remaining in the position of deserter. However, if a soldier is, for example, detained when he still had the opportunity to return voluntarily to the unit before the expiration of the term, he will no longer be held accountable for the offense of desertion, as he was at the disposal of the authorities who ordered the detention. According to Xenofon Ulianovschi [2], "desertion is committed by action or inaction and consists of leaving the military unit, training center, or place of service in order to evade military service, mandatory military training, or concentration, as well as the failure to appear for the same reasons at service or concentration in cases of leave from the military unit or training center, assignment, transfer, return from a mission, from leave, or from a medical institution, committed by a soldier, a person undergoing mandatory military training, or a reservist". Action constitutes leaving the military unit, training center, or place of service in order to evade military service, mandatory military training in the form of military service with a reduced term, or concentration. Thus, one of the obligatory secondary signs of the objective side of the offense of desertion is the place of the offense: the military unit, the training center, or the place of service. Soldiers serving in the term military service are installed, during military service, within the territory of military units, and the departure outside the territory of these military units of soldiers in the term military service is only allowed in connection with the performance of duties related to military service or on leave, with the special permission of military commanders. The order of leave for these soldiers by order of military units is regulated by Articles 259-265 of the Regulations.

Similarly, it is necessary to specify that evasion from military service occurs for many reasons and conditions, which ultimately leads to disorganization and disruption of established tasks, causing damages of any nature. In this regard, evading military service is a serious problem and a danger to society and the state as a whole. Practically, among the evasions from military service, the most frequent ones are: unauthorized abandonment of a unit or place of service and desertion. To date, this issue remains one of the most relevant, as by committing these offenses, military personnel evade their duties, violate military discipline requirements, ultimately leading to a weakening of combat capability and combat readiness of the Armed Forces equipped with complex combat equipment and collectively used weapons. Such types of weapons require clear, timely, and coordinated actions from many soldiers. Therefore, even isolated cases of unauthorized abandonment of a unit can lead to serious consequences, especially in times of war, in combat situations, during guard duty, in combat service, etc. In order to reduce cases of evasion from military service, it is necessary to identify the causes and conditions that contribute to this offense, as well as to take necessary preventive measures aimed at reducing offenses such as unauthorized abandonment of a unit or place of service and desertion. An increase in cases of unauthorized abandonment of a unit or place of service also occurs during the performance of combat missions by military personnel.

The legal basis of the military obligation in the Republic of Moldova is provided by Law No. 1245 of July 18, 2002 on the preparation of citizens for the defense of the Homeland and other normative acts adopted in its development. The purpose of the military obligation is to ensure the Armed Forces of the Republic of Moldova with military personnel during peacetime, as well as to ensure them with military personnel during mobilization.

In this context, we can deduce that unauthorized abandonment of a unit or place of service is socially dangerous, because it significantly weakens the combat capability of units and subunits,

military discipline, personnel organization, makes it difficult for commanders (chiefs) to train and educate subordinates, violates statutory order, and negatively affects unstable and undisciplined individual military personnel. The offense in question often provides the basis for committing other offenses against military service or common offenses, or accompanies them. The prevalence of this phenomenon once again demonstrates the need to combat the social danger of unauthorized abandonment of a part or place of service, which is closely related to the demographic situation developing in the country (a significant decrease in the number of men of military age). Referring to foreign doctrine, we can mention that according to the Penal Code of the Republic of Kazakhstan, the structure of the component of unauthorized abandonment of a unit or place of service corresponded to that adopted in Russian legislation, with the exception of two qualified elements: unauthorized abandonment of a unit or place of service committed during wartime if the unauthorized absence lasted more than one day; and unauthorized abandonment of a unit or place of service in a combat situation, regardless of duration [8].

In the criminal legislation of the Republic of Kazakhstan, as well as in Russian legislation, there are grounds for exemption from criminal liability for desertion. According to Kazakh law, these grounds are more detailed compared to Russian legislation. Thus, a soldier who has committed desertion without aggravating circumstances may be released from criminal liability by the court if desertion was the result of a combination of difficult circumstances and if they voluntarily presented themselves for continued military service [8].

In contrast, in the Penal Code of the Republic of Armenia, the provisions regarding liability for unauthorized abandonment of a unit or place of service are formulated as follows: "Unauthorized abandonment of a military unit or place of service, as well as failure to appear for service without valid reason on dismissal from a unit, appointment, business trip, vacation, or medical institution lasting more than three days, but not more than one month, as well as three or more times within three months, for a duration of one to three days, committed by military personnel in military service or on contract basis, is punishable by arrest for up to three months or disciplinary detention in a battalion for up to one year" [9].

In the Decision of the Parliament of the Republic of Moldova on the approval of the Concept of Military Reform, No. 1315 of July 26, 2002, it is established that "the system of ensuring the military security of the state represents a set of forces, means, and actions that ensure the prevention, deterrence, countering, and elimination of risks, threats, and military aggression against the sovereignty, independence, unity, territorial integrity of the country, and constitutional democracy" [10].

In specialized literature as well, we can find references regarding the examination of the causes from Article 371 regarding desertion. Thus, in one case, it was found: "Soldier M.B., performing military service by contract, holding the position of Team Servant 1 Shooting Platoon 2 Shooting Anti-Tank Artillery Battery Mt-12 Battalion Artillery Brigade 3 Motorized Infantry, corporal 2/2, being responsible for the manner in which he fulfills the entrusted missions; to be disciplined and vigilant, acting with direct intention to evade military service, he left without permission from the superior the territory of Military Unit Brigade No. 3 Motorized Infantry, located in Cahul City, 4 Mihai Viteazul street, and did not report for duty from 11.02.2019 until 22.02.2019 when he was discharged from military service before the end of the contract. Based on the above, examining under all aspects, fully and objectively the circumstances of the criminal cause, in accordance with Art.384, 385, 389, 392-394, and Art.391 paragraph (1) point 6), 396, 397 of the Criminal Procedure Code, the court decides: M.B. is recognized guilty of committing the offense provided for in Article 371 paragraph (1) of the Criminal Code of the Republic of Moldova".

From the case described above, we can observe that the criminal activity is described as being committed with intent. In specialized literature, the idea is mentioned that the offense of desertion can only be committed with direct intent, a fact resulting from the circumstances that

every soldier who is absent from the military unit or service for a period exceeding three days, and in case of war for a period exceeding 24 hours, foresees the harmful consequences of the committed act, which affect the relationships protecting discipline and military order, and desires the commission of the offense of desertion and the production of negative consequences.

Therefore, the qualification of offenses related to evading military service through desertion is a relevant issue, as it poses a cumulative set of difficulties not only to students, but also to a range of practicing workers, requiring a more in-depth study of this subject by representatives of scientific communities.

Military discipline, i.e., the strict adherence by soldiers to the order and rules established by laws and military regulations, requires each soldier to be constantly present at the unit or service in order to fully perform the tasks arising from the combat training program. The absence of soldiers from the unit is clear evidence of indiscipline and a flagrant violation of military duty. At the same time, such an act is likely to disrupt the activity of the unit or service, an activity that must be carried out perfectly. Consequently, the legislator's position to incriminate, under Article 371 of the Criminal Code of the Republic of Moldova, the act of desertion is justified.

As a result, desertion is a continuous offense, "it begins and ends as soon as the perpetrator has willfully left the military unit or the place of military service or from the moment when the soldier has failed to appear at the fixed term, without justified reasons, in order to evade military service, mandatory military training in the form of military service with a reduced term, or concentration, from service or concentration in cases of leave from the military unit or training center, assignment, transfer, return from a mission, from leave, or from a medical institution; committed by a soldier, a person undergoing mandatory military training in the form of military service with a reduced term, or a reservist, but is consummated at the moment of the detainment or voluntary presentation of the soldier to the military unit, at the place of military service, or to the authorities of law".

Conclusions. The objective side of the desertion offense is a complex one and covers aspects related to the actions of the perpetrator committing this offense. Desertion involves the abandonment of military service or obligations to the army, but when evading military service occurs during wartime or in situations of conflict, this significantly aggravates the degree of social danger of the respective offense.

According to V.A. Şapovalov›s opinion, the destruction of statehood usually begins with the liquidation of the armed forces. Therefore, military order and discipline should be viewed not only as factors ensuring defense against external enemies but also as indicators of the internal stability of the state. Military criminality is the product of negative social conditions. These contribute to the demoralization of young people, the inoculation of criminal experience in the military environment, and the refusal to fulfill military service.

Thus, the objective side can be influenced by the social, moral, and personal context of the deserter. Some individuals consider military service a sacred duty, and desertion would be considered a serious betrayal. Others may adopt a more critical attitude toward the armed forces and may justify desertion as an act of protest against specific policies or actions. Consequently, in the case of desertion offenses, military order and discipline are undermined as basic premises of the country's defense capability.

Finally, public perception of desertion is largely negative and can have serious consequences for the deserter, both socially and legally.

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LANGUAGE OF CRIMINAL PROCEEDINGS – COMPARATIVE STUDY

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Summary

According to the Article 16 of the Criminal Procedure Code of the Republic of Moldova (CPCRM), the Romanian language is used in criminal proceedings. If the person does not know or does not speak the state language, an interpreter may be used, under the law. A special provision contains Art. 16 para. (3) which mentions that criminal proceedings may also be conducted in the language accepted by the majority of persons participating in the trial, a provision different from Romanian law. According to Article 12 of the Romanian Criminal Procedure Code (CPCR), the official language in criminal proceedings is expressly mentioned – Romanian language, and Romanian citizens belonging to national minorities have the right to express themselves in their mother tongue before the courts. It also presents issues related to the right to an interpreter, European provisions in the field and case-law, as well as relevant national normative provisions referring to the language of criminal proceedings.

Keywords: official language, language of criminal proceedings, communication through an interpreter, Romanian language, national minority, right to an interpreter.

Introduction. Among the principles of criminal procedure in national legislation are also the provisions on the official language and the right to an interpreter (Article 12 of the CPCR), respectively the language of criminal proceedings and the right to an interpreter (Article 16 of the CPCRM). The normative provisions incident in the field have multiple similarities, but also significant differences. Procedural guarantees are complemented by constitutional guarantees for the purpose of fully respecting the linguistic identity of persons involved in criminal proceedings.

Methods and materials applied. In the present research, the comparative method, the analytical method and the deductive method were mainly used. The research undertaken is based on the study of the internal normative framework, relevant legal doctrine in the field and judicial practice.

Discussions and results obtained. The Constitution of the Republic of Moldova provides in Article 13 paragraph (1) that "the state language of the Republic of Moldova is the Romanian language, functioning on the basis of the Latin script" [1]. Article 118 contains references to the language of proceedings and the right to an interpreter, stipulating that "judicial proceedings shall be conducted in the Romanian language" [1]. Article 16 of the Criminal Procedure Code of the Republic of Moldova provides aspects regarding the language of criminal proceedings and the right to an interpreter. Paragraph 1 mentions that "the Romanian language shall be used in the conduct of criminal proceedings" [2], without specifying, as expressly mentioned in Romanian legislation, the official character of the Romanian language in criminal proceedings. The next paragraph specifies that if the person does not speak the Romanian language or does not possess it, he benefits from the right to "get acquainted with all the documents and materials of the file, to speak before the criminal investigation body and in court through an interpreter" [2], without specifying a particular quality of that person. An important and different provision from Romanian legislation is contained in paragraph (3): "Criminal proceedings may also be conducted in the language accepted by the majority

of persons participating in the trial" [2]. This provision derogates from the first paragraph and contains an addition to the status of judgments given in the case, without, however, referring to other procedural or procedural acts. Thus, if the trial will be held in the language accepted by the majority participants at the criminal trial, "procedural decisions must also be drawn up in the Romanian language" [2]. "The procedural documents of the criminal investigation body and of the court shall be handed over to the suspect, accused, defendant" [2], according to Article 16 paragraph (4) of the CPCRM, "translated into his mother tongue or into the language he knows" [2].

Prof. Dinu Ostavciuc, in the study "The language in which criminal proceedings take place and the right to an interpreter", carries out a complex and in-depth analysis on domestic legislation, doctrine and jurisprudence regarding the language in which criminal proceedings take place and the right to an interpreter and the effects of non-observance of this right. With regard to the right to an interpreter, the author mentions that "it is an absolute right only with regard to its gratuitous character" [3, p.163].

In the same vein, Prof. Mihail Udroiu, states that the right to an interpreter "is not absolute" [4, p.65], taking into account the possibility of refusal "to translate certain parts of the file or to appoint an interpreter if the applicant understands and speaks the language used" [4, p.65]. In this respect, we have as an example the ECtHR judgment of 18.10.2006 in Hermi v. Italy stating that, since "before the court the defendant stated that he could speak Italian and that he understood the accusation (...) in conjunction with the fact that the defendant had been living in Italy for 10 years (...) there is no need to provide translation or interpretation" [apud. 4, p.69].

Among the principles of criminal procedure law are also the provisions regarding the official language and the right to an interpreter, specified in Art.12 of the Romanian Criminal Procedure Code. According to the first paragraph of this article, "the official language in criminal proceedings is the Romanian language" [5, p.180].

Art. 12 paragraph (2) of the CPCR mentions that "Romanian citizens belonging to national minorities have the right to express themselves in their mother tongue before the courts, the procedural documents being drawn up in the Romanian language" [5, p.180]. The concept of national minority has not received a unanimously accepted definition nationally or internationally. In the doctoral thesis entitled "Protection of the rights of national minorities in public international law", Mrs. Petraru Roxana Alina defines the national minority as "a group of persons, numerically inferior to the majority in a state, residing in that state, with a close and lasting connection with it, who share their origin, language, traditions, culture or way of life and who wish to preserve all these distinctive qualities" [6, p.41]. In order to guarantee the right to express oneself in one's mother tongue, "the court must ensure, free of charge, the use of a sworn interpreter or translator" [4, p.68]. The exercise of this right can be done before the courts, the text of the law mentioned above not specifying the right to express oneself in one's mother tongue before the criminal investigation bodies.

Art. 12 paragraph (3) point I of the CPCR mentions that the subjects of the proceedings and the defendant, a civil party, the civilly liable party may know the pieces of the case, speak and submit conclusions in court through an interpreter, free of charge, if "they do not speak or understand the language Romanian or cannot express themselves" [5, p.180].

The same Art. 12 paragraph (3) in the point II mentions that the suspect or accused person may benefit free of charge from "the possibility of communication, through an interpreter, with the lawyer in order to prepare for the hearing, to lodge an appeal or any other request" [5, p.180], in the respective legal case, in the circumstances expressly provided by Article 90 of the CPCR on its mandatory legal assistance.

Art. 12 paragraph 4 provides that "authorized interpreters shall be used in judicial proceedings, according to the law. Authorized translators are also included in the category of interpreters, according to the law" [5, p.180].

As Prof. Mihail Udroiu also mentions, "the right of the parties or main procedural subjects to become acquainted with all the documents and proceedings of the case through an interpreter", does not include "the right to have all acts performed during criminal investigation or trial translated" [4, p.66]. According to Article 3 of Directive 2010/64/EU on the right to interpretation and translation in criminal proceedings, member states will ensure that 'essential' documents in a criminal case are translated in writing if the suspect or accused person does not understand the language of the criminal proceedings, therefore not all documents of a criminal case. The purpose of this provision is to guarantee "the rights of defence and (...) fairness" of the criminal proceedings [5, p.181]. In ECtHR Decision Plotnicova v. Moldova of 15 May, 2012, "complained of violation of Article 6 § 3 of the Convention on the grounds that the courts (...) did not order the translation of key documents" [apud 3, p.161].

The Romanian Criminal Procedure Code in Art.105 contains provisions regarding the hearing through an interpreter. Thus, when "the person interviewed does not understand, speak or express himself well in Romanian language" [5, p.218], an interpreter will be used. If he/she participates in the hearing, he/she will sign on the documents drawn up for this purpose, based on his/her interpretation/translation, in the relevant section. A significant provision contains the second sentence of Article 105 paragraph (1) which expressly states that "the interpreter may be appointed by the judicial bodies or chosen by the parties or the aggrieved person, from among the authorized interpreters, according to the law" [5, p.218], from which we can infer that only the defendant, the civil party and the civilly liable party, and from the main procedural subjects only the injured person has the right to choose a certified interpreter, not the suspect or other subjects of proceedings such as witness, expert, etc. In the case of the latter, an interpreter always appointed only by the judicial bodies will participate in their hearing, when the conditions laid down in Article 150 of the Criminal Procedure Code of Romani are met.

The following paragraphs of Article 150 of the CPCR provide for exceptions in the first paragraph. Thus, the hearing is carried out if any person who can communicate with the person being heard is present, if it is necessary to "take urgent procedural action or if a sworn interpreter cannot be provided" [5, p.218], in the latter case, if for example, there are either none or few nationally authorised interpreters for a particular language and those are unavailable at the time of the procedural measure. The rules of criminal procedure do not lay down any conditions as to how that person may communicate with the person interviewed, nor whether they may communicate only directly or also indirectly through other persons, nor whether that communication must be based strictly on one's own knowledge of the language concerned, that is to say, on an individual aptitude, as provided for in the last sentence of paragraph (4).

Given today's technological evolution and the multitude of applications available that can instantly translate conversations into the desired language, written or vocal, free of charge, the person who has even beginner knowledge of the language known by the person heard can communicate with him when there is an emergency and can be helped by these applications in practice, although they are not approved, but only in this case, to complete the communication and not if he does not know the language at all. However, the judicial body has a positive obligation to "resume the hearing by interpreter as soon as it is available" [5, p.218].

Article 15 paragraph (1) of Law No. 178/1997 provides that if there are no certified interpreters and translators, the bodies expressly mentioned in Article 1 of the Law may call on "trusted persons who know the languages from/and into which translation and/or interpretation is carried out and which they use routinely or professionally" [7]. If the person interviewed is deaf, mute or deaf-mute, a connoisseur of the special language will also be present or communicated with him in writing, otherwise any person with "communication skills" will be called upon [5, p.128], and then the hearing will be resumed through an interpreter. CSJ Decision No. 1397/29.05.1992 states that "when the injured person is a deaf-mute, withdrawal of the prior

complaint (...), shall not be valid unless it has been done through an interpreter or a written document (...)" [apud 4, p.69].

The sanction of violation of the right to an interpreter consists in the exclusion of evidence obtained in violation of legal provisions, in accordance with Article 102 paragraphs (2) to (4) of the CPCR.

Although legal doctrine states that "judicial bodies have a positive procedural obligation to ensure that interpretation is of superior quality" [4, p.68], general or special rules of criminal procedure do not stipulate how this obligation can be fulfilled in practice, and there is no mechanism for judicial bodies to ensure the high quality of interpretation or a subsidiary option of control or verification available to law enforcement bodies on the quality of the translation when they find during the hearing, for example, that the translation is not adequate or regular. According to Article 2 of Law No. 178 of 4 November 1997 on the authorisation and payment of interpreters used by various expressly mentioned public institutions, "the activity of interpreter and translator (...) shall be carried out by persons certified in the profession and authorised by the Ministry of Justice" [7].

The right to an interpreter, as part of the right to a fair trial, is also provided for in the European Convention on Human Rights, Article 6 para.(3) letter a) and e), which states that the accused person has the right "to be informed as soon as possible in a language which he understands and in detail" of the accusation against him and to attend his hearing, free of charge, an interpreter "if he does not understand or speak the language used at the hearing" [8, p.81]. The International Covenant on Civil and Political Rights provides in Art.14 para. (3) letter a) and f) that any person accused of an offence "shall be informed as soon as possible, in a language which he understands and in detail" of the accusation against him and shall have the free assistance of an interpreter "if he does not understand or speak the language used at the hearing" [9]. Comparing the two normative provisions, we find that the guarantees regarding the right to an interpreter and the right to a fair trial are more extensive in the case of the ECHR, which refers to the language used at the hearing, thus implicitly in the criminal investigation phase, while the guarantees in the ICCPR are more restrictive, referring only to the language used at court hearings. The European Parliament and the Council adopted Directive 2010/64/EU on the right to interpretation and translation in criminal proceedings and Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime which "obliges the provision of an interpreter in all cases where a person (...) is heard before the authorities (...), regardless of the phases and stages of the criminal proceedings" [3, p.159]. The CJEU stated in Criminal Proceedings c. Gavril Covaci, Case C-216/14, Decision of 15.10.2015, that "the right to interpretation provided in Article 2 of the Directive 2010/64, concerns the translation by an interpreter of oral communications (...) excluding the written translation of any document produced by these suspects or accused persons" [apud. 4, p.67].

Conclusions. The use of Romanian language in judicial proceedings is an expression of state sovereignty. Provisions on official language and the right to an interpreter are a basic principle of criminal procedure law and a means of guaranteeing the rights of defence and the fairness of criminal proceedings.

Compared to Romanian legislation, the Criminal Procedure Code of the Republic of Moldova contains more rights and guarantees regarding the use of the mother tongue or another language known by the majority of persons participating in the trial. While procedural documents are drawn up in the Romanian language always, according to Romanian criminal procedural rules, criminal proceedings in the Republic of Moldova can also be conducted in the language accepted by the majority of the persons participating in the trial, according to Article 16 para. (3) of the CPCRM. Procedural decisions will necessarily be drawn up in the language Romanian in this situation, the obligation not being mentioned for other procedural documents. Romanian legislation

does not know such derogation from the officiality of the Romanian language in criminal proceedings. Moreover, within the Romanian normative framework, the officiality of the Romanian language has a more prominent character.

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PARTICULARITIES OF THE HEARING OF THE SUSPECT/ACCUSED WITHIN THE INVESTIGATION OF MONEY LAUNDERING CRIMES

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Summary

The article mentions the importance of choosing the right interview tactics in money laundering investigation cases. This is a crucial stage in the investigation process, as it involves not only legal but also economic and financial aspects. Hearing of the suspect or accused in a money laundering case requires thorough and careful preparation, taking into account bank transfers, decisions made by decision makers, the use of off-shores and other relevant circumstances.

In order to ensure an efficient and productive hearing, it would be essential the questions asked to be carefully and tactfully formulated, given the complexity and nature of the money laundering offense. Thus, it is necessary to address the specific aspects of suspicious financial activities and to investigate in detail how the money was transferred, laundered or hidden.

Proper pre-hearing preparation is essential to ensure that the questions are relevant, well-founded and seeking to obtain information essential to the investigation. In addition, it is important to adapt the questioning tactics according to the answers and behavior of the suspect or accused during the questioning in order to maximize the efficiency and effectiveness of the investigation.

It is clear that, given the level of complexity and financial implications of money laundering offences, interview preparation and tactics play a crucial role in the investigative process and in obtaining relevant and illuminating information in the case.

Keywords: hearing, suspect, accused, criminal prosecution body, tactics, forensics, money laundering.

Introduction. Any economic crime is aimed at obtaining illegal profits, which requires their legalization, strictly speaking, giving the appearance of legal origin in any form. In the conditions of the elimination of total control over economic activity, the legal channels for carrying out financial transactions and other economic operations are used by people with an antisocial orientation not only for illegally obtaining income in money and other benefits, but also for investing these incomes in the economy in a legal way, as well as for the investment of these funds in the development of criminal activity.

Legalization (laundering) of money from illegal sources significantly undermines the financial interests of citizens, organizations, society and the state, mainly by stimulating artificial inflation through the uncontrolled involvement in circulation of the uncovered money supply. Not coincidentally, in Decision of the Parliament of the Republic of Moldova No. 391 of 15.12.2023 regarding the approval of the National Security Strategy of the Republic of Moldova in chapter V. *Methods and Directions of Action on Security Domains, p. 28 paragraph (2) letter g* as an action is indicated: "*strengthening the administrative capacity of the institution responsible for the operational and strategic analysis of financial information and combating money laundering, in order to identify cross-border threats and financial flows related to organized crime*"[1].

[1] Decision of the Parliament of the Republic of Moldova No. 391 of 15.12.2023 regarding the approval of the National Security Strategy of the Republic of Moldova. In: Official Gazette of the Republic of Moldova No. 17-19 of 17.01.2024.

The absence of a clear forensic methodology regarding the investigation of this type of crime, the difficulty of investigating money laundering, make this aspect become one of the perspective directions of research in the field of forensics. This circumstance is not accidental, because the development of an effective forensic methodology contributes to the improvement of the crime investigation process, the choice of the tactics of carrying out criminal prosecution actions and special investigative measures under the conditions of a typical concrete criminal investigation situation.

The main purpose of criminal investigation actions is to obtain information about each individual financial operation, to identify its connection with related actions of criminals. Only the combination of these data will allow the shaping of the picture of criminal activity and the discovery of schemes to launder the proceeds of crime, which can be more difficult to investigate than the original crime, which was a component of the technology of the criminal activity.

One of the most important elements of the complex of priority criminal prosecution actions, carried out at the initial stage of investigation of the crime, is the hearing.

The authors Gheorghiţa M., Doroş S.Gh., Osoianu T., Ostavciuc D., Odagiu Iu., Rusnac C. and many other researchers studied the peculiarities of conducting the hearing, developing general scientific principles regarding the procedure, tactics and psychology of the hearing. The most important of them have today become recognized tactics in the academic and practical environment. However, for the investigation of money laundering crimes, the existence and use of only general recommendations on interview tactics are not sufficient.

Discussions and results obtained. The particularities of questioning the suspect/accused in money laundering cases are related to the questioning tactics and its subject. The tactic implies compliance with all the actions in the preparation, work and documentation stage [5, p.159], as well as the correct choice of hearing procedures. From the point of view of the prosecuting officer, all the circumstances of the act are relevant to the investigation, namely [16, p.60]:

– the circumstances prior to the commission of the crime;
– the circumstances related to the commission of the crime;
– the circumstances after the commission of the crime.

Questioning the suspect/accused and questions regarding the circumstances prior to the commission of the crime are primarily related to the methods of preparation, motives and objectives of the subject of the crime. These circumstances and facts are very important for the evidentiary process, because the reason and purpose of legalization is not the transfer of funds obtained by criminal means itself, but attempts to hide the source of origin of the assets through the transfer. The reason and purpose is an objective action of the criminal, by which he tries to hide the source of origin of the goods by transfer, loan, transport, relocation, rental, etc.

"The hearing of the suspect/accused regarding the circumstances related to the direct commission of the crime aims to find out the place and time of its commission, the method of commission and the method of transfer of income in the legal financial sector. The questions should aim to find out the algorithms for the transfer of goods, including the ways of disguising them. By hearing the perpetrator, it is also necessary to find out the type of goods obtained due to the main crime and their volume. It is important to find out if the criminal had accomplices. The hearing and the questions to be asked depend on how the offender laundered the proceeds of crime" [7, p.860].

"The hearing of the suspect/accused regarding the circumstances of the commission of the crime is aimed at finding out the facts about the ways of using the proceeds of the crime, but more than that, it is aimed at obtaining information about their source in carrying out criminal activities" [7, p.860].

"Judicial doctrine and practice highlight the fact that the overwhelming majority of crimes of this kind are committed by organized criminal groups" [12, p.100-102]. Hearing the suspect/accused of money laundering if the crime was committed by a criminal group/organized criminal

organization involves a series of procedures and specific aspects.

In this context, the hearing must focus not only on the individual activities of the suspect/accused, but also on his connections with other members of the organized criminal group. The questions should aim: "1) the type, the way the criminal group is organized, what is the number of participants, their specialization and number, who is the organizer and leader of the group, who created it, how the roles are distributed among the perpetrators and what conspiracy measures are taken; 2) for how long and in what ways was the interviewee trained in the activity of the criminal group, what were the reasons, what role did he have within the group, from whom did he receive the instructions related to the criminal activity; 3) who among the participants was the generator of the idea regarding money laundering, what do they know about the circumstances of the case, what was the way of communication between the members of the criminal group; 4) who directly made certain decisions regarding money laundering and developed methods and procedures in this regard, what were the measures of conspiracy and ensuring the invulnerability of the group members, who distributed the obligations and roles among the accomplices or performed organizational and management functions within the structure; 5) which was the essence of the money laundering scheme: this can be about the identification of financial operations and transactions as well as the consecutiveness in which they were carried out; which natural or legal persons were involved in this activity; identifying the content of each individual transaction as a structural element within the mechanism for implementing the criminal intent; 6) who and in what ways identified the economic agents and trained them in the criminal schemes, how were the contacts and relationships of trust established with their representatives; 7) what was the object of the transaction, its equivalent and its components; 8) who prepared, perfected the documents of the transaction, fulfilled the obligations specified in it, who signed the documents on behalf of the decision-makers or other employees empowered in this regard (chief accountants, accountants, warehouse managers, etc.), who kept the stamps of fictitious economic agents, who was responsible for keeping the necessary documents for transactions concluding; 9) in what way and in what volume did the interviewed person and other participants fulfill their obligations assumed following the conclusion of the transactions; if these obligations were not fulfilled in full or in the proper manner, then what were the reasons; 10) who and in what way kept track of the money laundering process, the income obtained, what was the method of distributing the income within the criminal group, which amounts or other material values were obtained directly by the person interviewed, what the suspect did with the amounts or the goods concerned; 11) what would be the total, exact amount of money legalized as a result of the application of criminal schemes; 12) where, when, under what circumstances and by whom the criminal activity was suspended" [11, p.180-182].

Speaking about the hearing of the suspect/accused, that is part of a criminal group, we consider it appropriate to mention the authors Ostavciuc D., Rusnac C., Odagiu Iu. regarding the person responsible for conducting the hearing "must correspond to very high professional and psychological requirements and qualities, so that it can find precisely those tactical procedures necessary to obtain the most objective and truthful statements, can analyze them correctly and can use them as evidence that proves guilt or the innocence of the person interviewed" [6, p.60].

Regarding the questioning of the suspect/accused in the investigation of money laundering, we do not accept the recommendation of the author Natalia Janu who supports the opinion of Mr. Gheorghita M., as follows: "the questioning of the suspect is usually carried out in a conflict situation. Only in some cases is this activity carried out in a non-conflict situation, when the suspect from the very beginning admits his guilt and presents honest statements regarding the committed" [3, p.20, 581].

The opinion that the questioning of the suspect/accused in a criminal investigation usually takes place in a conflict situation is, in some respects, problematic and can be criticized from sev-

eral perspectives:

Excessive generalization: the statement that interrogation usually takes place in a conflict situation is an overgeneralization and does not take into account the variety of circumstances and behaviors of suspects/accused during interrogation. There are many cases where the hearing is conducted in a cooperative and collaborative setting, where the person provides relevant information without creating conflict.

Individual context ignoring: not all suspects/accused behave in a hostile or confrontational manner during interrogation. There are various reasons why someone might cooperate with the investigation or be open to discussing the allegations. Ignoring these individual variations can lead to stereotyping and the neglect of important aspects of research.

Perception influenced by the legal and cultural environment: the legal and cultural environment of certain judicial systems or law enforcement practices may influence the perception that hearing is always adversarial. In some jurisdictions or cultures, there is a prevailing attitude that adversity is an inevitable part of the legal process, but this is not universally true and may vary by context.

In conclusion, the opinion that the questioning of the suspect/accused is usually in a conflict situation must be critically analyzed, taking into account the variety of behaviors and circumstances that can influence the conduct of the questioning in a specific case. It is important to assess each individual situation appropriately, but not to generalize and apply stereotypes.

In our opinion, the hearing will take place not only in the conflict situation, without conflict, but semi-conflict. The hearing of the suspect/accused will not be possible only in the "passive" situation.

Analyzing the subject of the hearing in the case of the crime of money laundering, the authors Anapoliskaya A. and Kanina Y. recommend first hearing the suspect/accused of money laundering, and then the bank representatives, business partners and, if necessary, the specialists involved in carrying out documentary checks, audits and revisions. According to these researchers, such a practice will help avoid the distortion of information by the perpetrator and reduce the possibility of obtaining false statements from them [8, p.437-442].

The opinion expressed by Anapoliskaya A. and Kanina Y. regarding the order of the hearing in the case of the crime of money laundering may represent the subject of justified criticism for several reasons:

The potential for information distortion: Hearing the suspect or defendant in money laundering before the other participants involved in financial transactions can lead to a distortion of information. The perpetrator may be aware that other people will later be questioned and may provide false or incomplete information to try to cover their tracks or minimize their involvement.

Lack of a comprehensive perspective: Starting the investigation by interviewing the perpetrator may limit the full understanding of the context and all the elements involved in the money laundering crime. Initial questioning of the suspect without complete and detailed information about financial transactions and relationships with other individuals may restrict the prosecuting officer's ability to obtain a complete and accurate picture of the case.

Risk of loss of critical information: Delay in hearing of other participants, such as bank representatives and business partners, could result in the loss of critical information or the deletion of important evidence. Effective research should begin by obtaining all relevant information as quickly as possible to prevent loss or damage.

In conclusion, the order proposed by Anapoliskaya A. and Kanina Y. for the hearing of the participants in the case of the crime of money laundering may present certain risks and limitations in terms of obtaining a complete and accurate investigation. It is important that prosecuting officers carefully assess each case and adopt an approach that ensures obtaining of the most relevant and correct information.

The questioning of the suspect/accused, especially at the initial stage, should be thorough and cover all aspects of the criminal activity. In this regard, it is advisable to ask the person interviewed to support their statements with some evidence to elaborate, confirm or deny their own statements.

To demonstrate the subjective side of the crime, it is necessary to analyze the reasons for its commission. The reason for committing the crime is determined by the degree of social danger of the action and the individual characteristics of the person in question. In the same way, it should be emphasized that when we talk about the issue of the motivation for the commission of the crime, we understand that it also includes the determination of the causes that conditioned the interruption or refusal to commit the crime. Since the actions of a person represent a concrete form of transition from the subjective to the objective, it is necessary to clarify the objective side of the crime (the stages and ways of realizing the criminal intent, the mechanisms of hiding traces), as well as the personal relationship of the criminal to the act committed [13, p.50].

Among the arguments used in self-justification, criminals often invoke the following: material difficulties, lack of legislative knowledge, careless attitude towards work and professional responsibilities, incompetence in dealing with people, excessive confidence, belief that law enforcement is incapable of detecting the crime. Given these arguments, it seems necessary to study not only their duties, but also the service instructions of all employees involved in the commission of the crime. The letters, requests and documents collected also contribute to the establishment of the truth in this regard. Studying these materials together with the normative acts that regulate a certain field of entrepreneurial activity provides grounds for researching the reasons that led them to commit the act of money laundering.

The possible reasons why the suspicion was directed at the suspected person, who denies his involvement in money laundering, must be clarified [17, p.56].

The tactical procedures for detailing the statements will have a distinct effect on the hearing. In this case, the scope of clarification questions should be as wide as possible, including even several dozen questions per detail [15, p.127-131]. By asking detailed questions, more accurate and complete information can be obtained, which can provide important clues for investigation. Broad ranges of questions admit exploration of every aspect of the statements, allowing the prosecuting officer to identify inconsistencies and gain a clearer picture of events. Thus, using a large number of questions per detail can be essential to obtaining solid evidence and building an effective investigation.

It is also effective to use the procedure of using evidence of guilt, starting from the least significant to the most important. First of all, this contributes to the activation of the associative connections of the interviewed person, in order to remember the events related to the crime. Secondly, this method prevents the formation of erroneous or fabricated testimonies. Selivanov M. is convinced of the effectiveness of applying such a technique during several repeated hearings, the essence of which is to destabilize the position of the person providing false testimony. Depending on the circumstances (willingness to cooperate with the criminal investigation body, fear of being discovered, etc.), the person can start providing truthful information even from the moment of invoking insignificant material evidence [14, p.135].

We support the opinion of the author Selivanov M. and despite the obvious benefits of this procedure; there are some aspects that could be taken into account to improve its effectiveness:

Diversification of query methods: although this procedure can be effective, it is important not to rely exclusively on it. A diversified approach, involving other interviewing procedures, such as detailed questioning or systematic interviewing, could provide a more complete and accurate picture of the prosecution situation created.

Assessment of subjectivity: it is essential to be aware of the subjectivity of the interviewee's interpretation of the material evidence. A particular piece of evidence may have a different impact

on each person, and this must be taken into account in the process of evaluating the information provided.

Assessing risks and benefits: before applying this procedure, it is important to carefully evaluate the risks and benefits involved. It is possible that some physical evidence can be misinterpreted or have a negative impact on the person interviewed.

It is therefore essential to consider other aspects to ensure the effectiveness and fairness of the hearing process.

Vasilieva I. emphasizes that "a distinctive feature of the use of this procedure in the investigation of the crime of money laundering is the fact that the documents confirming the illegal act can be used not only during the hearing, but also during the confrontation, provided that the following requirements are met: the statements of the truthful participant are sufficiently comprehensive and cover many of the events of the crime or its significant circumstances, and the investigation has documents to confirm them; the prosecuting officer trusts the truthful participant to adopt an offensive position during direct confrontation aimed at disguising false statements" [10, p.34-38].

"In a money laundering investigation in which companies established in tax havens are used, consisting in enumerating of all the factual elements, which should be primarily to be carried out, which will further allow the judge to establish the intention of the perpetrator: not seldom, we find in the files either the use of these companies to mask the investor, the owner of the business, or for the ticking of some state companies by simulating some businesses under the cover of which the goods from crimes are transferred. That is why, when hearing the suspect/defendant, the questions must be centered in order to verify all the possible explanations he could have regarding the reality of the transactions carried out through the front companies, with the suspect having to specify what were the true needs that determined the various economic explanations accompanying transfers of sums of money between companies that there are indications that they would be controlled by them. These explanations are required to be verified by the judicial body and corroborated with the other evidence administered in the case" [1, p.22].

Speaking about the recording of the hearing, we support the author Afzaletdinova G.'s opinion that the hearing of the suspect/accused determines the recording of the following important aspects in the minutes of the action:

– "criminal procedural requirements (Art. 260, 261, 115 of the Criminal Procedure Code of the Republic of Moldova);

– the circle of people with whom they communicate (relatives, friends, colleagues; duration of communication, common interests, the way of getting to know these people and the reasons, etc.);

– information on the existence of accounts, bank cards, deposits, which were opened and were active during the period of interest for the law enforcement body, etc.;

– information on the availability of movable and immovable property (in whose name they are registered), which were in force at the time of legalization, i.e. during the period of interest for the relevant authorities; the future fate of the respective goods;

– the circumstances of obtaining money or acquiring property obtained through criminal means;

– the circumstances, steps, types of committing specific actions to make the goods or money appear legitimate;

– the purpose of acts of concealment of the criminal source of money or goods;

– information that the interviewed person has regarding the main crime, the damage caused and its victims;

– by whom, when and under what circumstances was the plan of transactions (scheme of commission of the crime) conceived and implemented or aimed at omitting the crime of money laundering;

– information on the accounts opened at banking or credit organizations through which money laundering was carried out, as well as on the persons who carried out these financial operations;

– information on the operations carried out through ATMs, bank terminals, their addresses, the persons who carried out the operations;

– information about personal accounts, passwords and logins, through which it is possible to dispose of funds or assets in accounts in banking applications and electronic wallets;

– information on the institutions and organizations that registered transactions or financial operations through which money or goods were legalized and the persons involved;

– in what period of time, where, by whom and under what circumstances were the documents drawn up (with the help of which technical means), which were subsequently used to conceal the criminal origin of the money or goods;

– what computers, laptops, phones, tablets (other) were used to access the Internet, use electronic boxes, social networking sites to solve problems related to the process of legalization of money or other goods, by whom and in what period of time;

– in what period of time, by whom and to whom were legalized funds or other properties, bank accounts, deposits, SIM cards and other documents proving the ownership and alienation of the aforementioned by a certain person;

– information about hiding places, safes with cash or goods acquired as a result of the commission of the main crime, their location;

– information about other persons and organizations involved in the process of money laundering or other assets obtained as a result of the commission of the main crime, their degree of knowledge regarding the true purposes of operations and financial transactions;

– the remunerating issue for people who were involved in money laundering" [9, p.47-48].

Conclusions. During the hearing of the suspect/accused, the criminal investigation officer usually has at his disposal more significant information from a forensic point of view regarding the fact of money laundering, obtained from the hearing of witnesses, other participants in the crime, reports of seizures, searches, examination of objects and documents, as well as expert reports. Consequently, the questioning of the suspect/accused of this type of crime should aim at establishing the details of money laundering, presenting evidence to obtain statements from the subject. We should not forget the importance of the competent and effective use during the hearing of the tactical procedures and combinations that increase the effectiveness of this criminal prosecution. It is also necessary to take into account the role that it had in the commission of the main crime, since on this depends the degree of awareness of the criminal activity in general and of the specific episodes.

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ANALYSIS OF INFORMATION IN CASE OF CRIMINAL INVESTIGATIONS REGARDING THE ILLEGAL PRACTICE OF ENTREPRENEURIAL ACTIVITY

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Summary

This analysis involves collecting and examining all available evidence, including documents, records, testimonies, and other relevant information, in the current era of information development. This article focuses on the sources of information about crimes related to illegal entrepreneurial activities, which are punishable under the criminal legislation of the Republic of Moldova.

Keywords: investigation, entrepreneur, sources of information, illegal, analysis, testimony, evidence, documents.

Introduction. Investigations into illegal entrepreneurial activities [1] are a significant concern in the fight against economic and financial crime. In the context of a constantly evolving global economy, where borders are becoming more porous and digital technologies facilitate various forms of fraud and tax evasion, information analysis becomes an essential component of criminal investigations. This paper focuses on the role and importance of information analysis in investigating crimes related to illegal entrepreneurial activities. Through advanced tools and technologies, such as information analysis systems like i2 [2], the investigation can benefit from a more efficient and precise approach in identifying illegal schemes, connections between involved entities, and relevant evidence.

Information analysis can provide a comprehensive perspective on the illegal activities of entrepreneurs, including suspicious financial transactions, dubious business relationships, and money laundering schemes. Through this analytical process, the investigation can uncover hidden patterns, unusual relationships, and fraudulent behaviors that would otherwise be difficult to identify. In light of these considerations, it is evident that information analysis plays a crucial role in investigating crimes related to illegal entrepreneurial activities. By using advanced technologies and specialized methodologies, competent authorities can achieve faster, more precise, and more efficient results in combating economic and financial crime.

Investigators must verify the legality of the entrepreneur's activities in question, identify possible law violations, and gather solid evidence to support the accusations. It is important to carefully analyze every detail and follow the logical thread of events to reconstruct the entire picture of the offense.

Discussions and results obtained. In the case of investigating offenses related to the illegal practice of entrepreneurial activities (as well as other offenses), the analysis of information must be rigorous, objective, and comply with legal procedures to ensure a fair and equitable investigation. When investigating the offense of illegally practicing entrepreneurial activities, the following information should be analyzed:

I. ***Legal documents***. This method involves a careful examination of all relevant documents, such as company establishment documents, contracts, invoices, financial records, etc. A detailed analysis of these documents can reveal possible irregularities or illegal activities. The analysis of documents in the investigation of the offense of illegally practicing entrepreneurial activities consists of a thorough examination of all relevant documents associated with the business or criminal activity. This analysis aims to identify evidence and information that can support the accusations and help obtain solid evidence against the offender.

Here are some important aspects of document analysis in this context: a) Company establishment documents. The company establishment documents, the founder's or their representative's identity document, and the legal entity's administrator, the registration application, according to the approved model by the state registration authority, the founding decision, and the establishment documents of the legal entity are examined, depending on the organizational legal form, the statement regarding the beneficial owner, the licenses to [3]. b) Contracts and agreements: Contracts entered into by the entrepreneur with clients, suppliers, business partners, or other involved parties are analyzed to identify possible irregularities or law violations [4]. c) Invoices and financial records: Invoices issued and received, accounting records, financial statements, and other financial documents are checked to identify possible discrepancies, tax evasion, or other illegal activities related to money management. d) Personnel-related documents: Documents related to employees, salaries, social contributions, employment contracts, etc., are examined to verify compliance with labor laws and other legal regulations. e) Tax documents: Tax declarations, financial reports, tax payment documents are analyzed to identify possible violations of tax laws or other illegal activities related to tax evasion. f) Other relevant documents: Other relevant documents such as audit reports, inspection reports, official correspondence, etc., may also be analyzed to obtain additional information and support the investigation. Through a careful analysis of these documents and other relevant evidence, competent authorities can gain a clear understanding of the entrepreneur's illegal activities and gather solid evidence to support the accusations in court.

II. ***Financial Analysis***: Investigating financial transactions, bank accounts, cash flows, and other financial aspects can provide important information about possible illegalities, such as illegal entrepreneurial activity, tax evasion, or money laundering. Financial analysis in the case of investigating the offense of illegally practicing entrepreneurial activities plays a crucial role in identifying and documenting illegal or fraudulent activities. Here are some important aspects of financial analysis in this context: a) Tracking money flows [5]. Financial analysis involves closely tracking the money flows within the entrepreneur's business to identify possible discrepancies, suspicious fund transfers, or other unusual financial activities that could indicate illegal practices. b) Checking bank accounts. The entrepreneur's bank accounts are examined to identify suspicious transactions, unjustified deposits, cash withdrawals, or other financial activities that may raise questions. c) Analyzing tax statements. The entrepreneur's tax statements are reviewed to identify possible discrepancies between declared income and actual income, tax evasion, or other violations of tax laws. d) Evaluating assets and liabilities. The entrepreneur's assets and liabilities are evaluated to determine their solvency and to identify possible accounting manipulations or other fraudulent practices related to asset and liability management. e) Analyzing expenses and revenues. The entrepreneur's expenses and revenues are examined to identify possible discrepancies or irregularities in the financial management of the business, such as unjustified expenses, undeclared income, or other illegal practices. f) Identifying Money Laundering Schemes: Financial analysis can help identify possible money laundering schemes used by the entrepreneur to conceal the illegal origin of funds or to legitimize income obtained from illegal activities.

III. ***Accounting Analysis***: Collaborating with accounting experts to examine financial records, balance sheets, profit and loss accounts, etc., can help identify discrepancies or other financial issues that may indicate illegal practices. Accounting analysis in cases of offenses related to

the illegal practice of entrepreneurship involves a detailed examination of accounting documents, financial records, and other relevant financial records to identify possible irregularities, fraud, or illegal activities. Here are some specific aspects of accounting analysis in this context: a) Examining accounting records: Accounting analysis involves carefully checking accounting records, including ledgers, cash registers, trial balances, etc., to identify any discrepancies, errors, or accounting manipulations. b) Verifying financial transactions: Financial transactions recorded in the accounting system are examined to identify possible unauthorized transactions, fictitious invoices, suspicious fund transfers, or other fraudulent financial activities. c) Analyzing cash flows: Cash flows recorded in the accounting system are analyzed to identify possible discrepancies between cash inflows and outflows, unjustified withdrawals, or other suspicious financial activities. d) Evaluating compliance with tax laws: Compliance with tax laws recorded in the accounting system is verified to identify possible tax violations, tax evasion, or other illegal practices related to the accurate reporting of income and expenses. e) Identifying Accounting Manipulations: Accounting analysis aims to identify possible accounting manipulations, such as overstating revenues, undervaluing expenses, or other fraudulent accounting practices used to conceal illegal activities [6, p.19]. f) Reconciling Financial Data: Financial data reconciliation is performed between various accounting documents and financial records to identify any discrepancies or recorded errors that may indicate illegal practices. Through a detailed analysis of accounting documents and financial records, accounting experts can identify possible irregularities or illegal activities within the entrepreneur's business and provide valuable information to competent authorities for investigating and documenting the offense of illegally practicing entrepreneurial activities, as well as other types of illegal activities related to tax evasion, money laundering, etc.

IV. ***Analysis of Relationships and Connections***: Investigating the entrepreneur's relationships with other individuals or entities, as well as their connections in the business environment, can reveal possible conflicts of interest, fraudulent schemes, or other illegal activities. In the case of investigating the offense of illegally practicing entrepreneurial activities, the analysis of relationships and connections can be crucial in identifying criminal networks, accomplices, and possible fraud schemes.

There are several analysis applications that can be used in this context, including:

1) Social Network Analysis: This application uses data about the relationships and connections between individuals involved in illegal activities to identify the structure of criminal networks, leaders, accomplices, and how they interact.

2) Transactional Analysis. This application focuses on analyzing financial transactions between different entities involved in illegal activities to identify patterns, money flows, goods, and possible money laundering schemes.

3) Network Analysis: This application focuses on identifying connections and interactions between different entities involved in illegal activities, including business partnerships, property transfers, or other relevant links.

4) Text and Data Analysis: This application involves analyzing messages, documents, and other data sources to identify relevant information about the relationships and connections between individuals involved in illegal activities.

5) Graphical Analysis: This application uses graphs and diagrams to visualize and analyze the relationships and connections between different entities involved in illegal activities, facilitating the identification of patterns and links. For example, the i2 information analysis system is a specialized software platform for analyzing and visualizing data for complex investigations, including in the field of combating economic and financial crime. Applying this system to investigate the illegal activities of an entrepreneur can bring multiple benefits, including network analysis. The i2 system can be used to analyze networks of relationships between entrepreneurs, business partners, clients, suppliers, and other entities involved in illegal activities. This analysis can help

identify connections and interactions that may be relevant to the investigation.

Financial transaction analysis through the i2 system can be used to analyze financial transactions carried out by the entrepreneur and other entities involved in illegal activities. This analysis can help identify money laundering schemes, tax evasion, or other illegal practices related to illegal activities. The i2 system offers advanced data visualization capabilities, including graphs, diagrams, and interactive maps. These tools can facilitate understanding the complexity of relationships and schemes involved in the entrepreneur's illegal activities. Similarly, text analysis from emails, messages, and other types of communications can be used to identify relevant information or detect patterns or keywords related to illegal activities. The i2 system allows for the generation of customized reports and analyses tailored to the specific needs of the investigation. These reports may include conclusions, recommendations, and graphical visualizations that can support the decision-making process within the investigation.

V. *Witness Statements*. Careful analysis of witness statements, audio or video recordings, and other relevant evidence can provide additional information and strengthen the case against the offending entrepreneur. In the investigation of the crime of engaging in illegal activities by an entrepreneur, the analysis of statements and other evidence is essential for establishing guilt or innocence. There are several methods and techniques of analysis that can be used in this context, including:

1) Testimonial content analysis. This method involves a detailed examination of the statements made by witnesses to identify consistencies, inconsistencies, gaps, or other relevant elements that could support or contradict the claims of the entrepreneur or other individuals involved [7, p.180].

2) Comparative testimonial analysis: This method involves comparing statements made by different witnesses to identify discrepancies or similarities between them, which could indicate possible collaborations or mutual influences among witnesses.

VI. ***Examination of Physical Evidence***. Physical evidence in the investigation of illegal entrepreneurial activities may include, but is not limited to: financial documents (invoices, receipts, contracts, accounting records, bank statements, and other documents that may highlight suspicious transactions or financial irregularities), electronic equipment (computers, mobile phones, data storage devices, which may contain relevant information about the illegal activities of the entrepreneur), goods or merchandise (products that are not permitted for the entrepreneur's business, counterfeit products, or other illegal goods that can be used as physical evidence in the investigation), video or audio recordings that may capture illegal activities or compromising discussions, fingerprints, objects found at the scene of the crime, or other physical evidence that may connect the entrepreneur to the crimes being investigated [8, p.276].

Examination of Signatures and Documents is a method which involves a careful examination of signatures, documents, and other written evidence to identify forgeries, alterations, or other relevant elements that may indicate illegal practices by the entrepreneur.

VII. Behavioral Analysis plays an important role in investigating illegal entrepreneurial activities and can provide valuable information for understanding the motivations, intentions, and behavioral patterns of the entrepreneur. Behavioral analysis can help create a psychological profile of the entrepreneur, including personality traits, motivations, attitudes, and characteristic behaviors that may influence their illegal decisions. Studying the entrepreneur's communication, including language used, tone of voice, facial expressions, and other non-verbal aspects, can provide clues about the truthfulness or falsehood of their statements and the extent of involvement in illegal activities. Investigating the entrepreneur's social networks and relationships can reveal connections to other individuals involved in illegal activities or suspicious partnerships that may be relevant to the investigation. Evaluating past risk and behavior may involve assessing the entrepreneur's previous behavior, including criminal history, risk-taking behavior, and reactions to stressful or pressured situations.

Conclusions. To enhance the efficiency of investigating the aforementioned facts, as well as to create a fair entrepreneurial space by eliminating or minimizing economic crime, it is necessary to strengthen the institutional capacities of the authorities responsible for investigating and enforcing the law. Effective cooperation among various institutions such as the police, prosecution, tax authorities, and other relevant entities is essential for investigating and sanctioning economic crimes. Similarly, the development and implementation of efficient mechanisms for monitoring economic activities, as well as transparent reporting of relevant information, can significantly contribute to preventing and combating illegal practices. Lastly, promoting education and awareness among entrepreneurs and the general population regarding the consequences of engaging in illegal economic activities can play an important role in preventing crimes, and the rigorous enforcement of the law against those engaging in illegal entrepreneurial practices would be the state's firm response to not tolerate such violations.

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SOME PARTICULARITIES OF USING WITNESS STATEMENTS FOUND IN JUDICIAL PRACTICE

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Summary

Witness statements remain a fundamental role in the criminal process, even if technical and scientific progress ensures the emergence of various new mechanisms for establishing the truth. One of the fundamental aspects concerns multiple perspectives on situations or events that witness statements can offer, allowing authorities to obtain a complete and balanced picture of the facts. They contribute to the overall assessment of evidence and to establishing its veracity and relevance in the criminal proceedings.

"Witness" has an autonomous meaning in the Convention system, regardless of the legal framings under national law.

Judicial practice also derives from other situations in which persons are heard as witnesses than traditional ones: 1. the possibility of hearing as witnesses of a co-defendant, in case his case was disjointed in relation to the request for the examination of the case based on the procedure provided by Article 364/1 of the Criminal Procedure Code; 2. possibility of hearing as a witness of the investigating officer. In both cases it is possible to hear those persons without affecting the fairness of the criminal proceedings.

Keywords: statements, witness, summary procedure, criminal legislation, individual rights, procedural equity, judicial efficiency, fighting crime.

Introduction. Summary procedures and witness statements are essential tools in the legal system for preventing and combating crime, contributing to the efficiency of the judicial process and providing relevant information for investigations and judicial proceedings. The completion of criminal justice in case of committing criminal acts is possible following the performance of an activity on the part of the state, which cannot be arbitrary [1, p.27].

For the achievement of criminal justice, it is not enough just the self-employment of the competent bodies. In these actions are attracted or participate persons with procedural rights and obligations arising from the fact of committing the crime, as well as other persons, who according to the law, are attracted, they are called to help solve the criminal case. In this context, the importance of the testimonial evidence in the criminal proceedings has led some authors to attribute to it the natural, unavoidable evidence of a necessary instrument for knowing the circumstances of the offences [2, p.10].

Witness statements are one of the oldest and most widespread means of evidence, which has appeared and been transmitted since antiquity, retaining until today its probative value [3, p.109].

Witness statements directly contribute to finding out the truth and, therefore, to solving the criminal process to the extent that they reveal the factual elements that can serve as evidence for finding the existence or non-existence of a crime, for the identification of the person who committed it or for the recognition of circumstances essential to the case. Their statements perform this function, either by themselves, when there is no other means of proof or by corroboration with other means of proof, when there is. The reliability and credibility of these statements are essen-

tial for making the right decisions in the judicial process.

Methods and materials applied. In the present study, the following methods were applied: observing, describing, performing an analysis of materials that address the legal, institutional framework regarding witness statements, and, analysis of national and foreign theoretical works with important valence in witness statements in summary procedures, conducting interviews (empirical study).

Discussions and results obtained. The use of witness statements has shown benefits in terms of the efficiency of the judicial process and the provision of information crucial to investigations. However, there are concerns about ensuring respect for individual rights, procedural fairness and the correct assessment of the credibility of witnesses.

According to the opinion of professor Ion Neagu, witnesses are called „eyes and ears of justice", precisely to emphasize the importance of them and their statements in the criminal process [4, p.423].

„Witness" has an autonomous meaning in the Convention system, regardless of the legal framings under national law [5, item.45; 6, item.45]. Where a deposition can substantiate to a considerable extent the conviction of the defendant, it constitutes testimony in support of the prosecution and the guarantees provided in Articles 6 para.1 and para.3 letter d) of the Convention are applied to it [7, item 53; 8, item 41].

The notion also includes co-defendants [see, for example, 9, item 37], victims [10, item 97] and experts [11, item 81-82; 12, item 299-300].

The witness hearing process is complex, due to the emotional impact, as well as due to the diversity of culture, education, principles and the way each person interprets certain events, which may in fact lead to distortion of witness testimony and in turn delaying the process of establishing truth. Thus, in order to avoid distortions of factual data known to the witness in connection with the commission of an illegal act, a particularly important role is played by the person directly conducting the hearing of the witness [13, p.358-362].

It is found that, depending on several criteria, hearing a witness may take place differently, such as: either ordinary or heard in a special way.

The preparation for hearing the witness generally refers to the following elements: studying the cause, knowing the personality of the witnesses and their relations with the parties in the process, drawing up the hearing plan and determining the questions to be addressed to the witness, preparing the materials to be used during the hearing, choosing the time and place where the hearing is to be conducted, and, choice of the means of summoning the witness to the hearing [14, p.192-196].

The general rule, if the witness is not subjected to any danger, or this is not a special subject, provides that his hearing is carried out following the summons, or, the conditions imposed by article 235-242 of the Criminal Procedure Code are complied with.

During the hearing, the statements will be recorded in the minutes regarding the hearing of the witness, in compliance with the provisions of Art.260 and Art.261 or as the case may be, Art.336 and 337 of the Criminal Procedure Code.

The hearing of the witness under special conditions is carried out in the following situations:

– The witness is a minor under the age of 14 and is to be heard in criminal cases regarding sexual crimes, trafficking of children or domestic violence, and, as well as in other cases where the interests of justice or of the minor require it, or,

– There are good reasons to consider that life, or, the bodily integrity or freedom of the witness or a close relative of the witness are at risk in relation to the statements he makes in a criminal case concerning a serious crime, particularly serious or exceptionally serious.

In this study, an empirical research was carried out between the justice actors (judges, pros-

ecutors, lawyers) on possible problems arising in the implementation of summary procedures in practice.

Following the analysis carried out, we found that most of the interviewees indicated that in the process of examining the case in summary procedure, equal importance is given to both the testimonial evidence „declarations of the defendant, the statement of the defendant, of witnesses, of the injured parties", as well as other means of proof „report of expertise, tort bodies, audio/video recordings, photos, results of special investigative measures". That is, the guilt of the person in committing the imputed crime must be proved, by corroboration, by all means of proof, in order to exclude any doubt that would pay attention to the presumption of innocence.

Following the study, it was also noted that, in summary procedures, namely the procedure provided in Article 364[1] of the Criminal Procedure Code, the evidence is not investigated directly at the hearing, but the prosecution part at the stage of the judicial investigation only refers to it (they are administered at the stage of criminal prosecution). In the hearing only the defendant is heard according to the rules of hearing the witness and the injured party – on the civil action.

Taking into account that only the defendant who acknowledged the act is heard in summary proceedings, other evidence being only mentioned, unpredictable situations arise in practical work.

One of these situations is the possibility of hearing as a witness of a co-defendant, in case his case was disjointed in relation to the request for the examination of the case based on the procedure provided by Article 364[1] of the Criminal Procedure Code. From empirical research it was possible to deduce a problem encountered in practical work. Thus, cases were found in which the prosecution party presented in the general proceedings the sentences handed down in the summary proceedings in which the statements of the co-defendants were mentioned due to disjunctions. In the opinion of the prosecution these sentences were sufficient, excluding the need to summon and hear the co-defendant as a witness.

Regarding those indicated above, the Constitutional Court ruled by Decision No. 40/2018 point 38.

According to the Court, the principle of the presumption of innocence is not violated, if in the disjointed criminal case, the persons who were tried in the simplified procedure will be called to make statements. The declarations of the persons concerned cannot have a pre-established evidentiary value, being appreciated in conjunction with other evidence. Compliance with the principle „presumption of innocence" provided by Article 21 of the Constitution and Article 8 of the Criminal Procedure Code, constitutes an obligation both to the court and the criminal prosecution body [15, point 38].

In another Decision, No. 78/2018 at point 36, the Court noted that if, in the case of a disjointed criminal case, they will be summoned to submit declarations, the persons who were tried in the simplified procedure, the, the court is obliged to respect the presumption of innocence and to pronounce a sentence of conviction only if the guilt is established beyond reasonable doubt. The existence of evidence beyond reasonable doubt constitutes an essential component of the right to a fair trial and establishes the obligation of prosecution to prove all the elements of guilt in a manner capable of removing any doubt [16, p.36].

Thus, the standard of proof with co-defendant witnesses (in case of disjunction of the case for examination in simplified procedure) can be fully understood only by reference to the principle of „*in dubio pro reo*", which, in turn, it is a guarantee of the presumption of innocence.

By the Decision of the Court No.14/2019, item 24, it was indicated that given that any conviction must be based on sufficient evidence, to remove any doubt about the innocence of the person, judges should put statements of persons co-accused in accelerated proceedings at the basis of the sentence only in conjunction with other evidence (see, see, the court said, e.g., Judgment of the Constitutional Tribunal of Spain No.111/2011 of 4 July 2011) [17, point 24].

So then, from the above accounts it is concluded that the standard of proof in summary proceedings is the same as in general proceedings – beyond any reasonable doubt it is inadmissible to base the sentence on the declarations of a co-inculpated from a disjointed case without being heard under the general rules of hearing the witness.

Another situation would be the possibility of hearing as a witness of the investigation officer.

Regarding those mentioned above, the Constitutional Court by Decision No.121/2018, item 32 indicated that the investigation officers do not fall under Article 90 para.(3) letter 4) of the Criminal Procedure Code, which leads to the conclusion that the challenged provisions are not applicable to the investigation officers. Consequently, these persons may be heard as witnesses in the criminal proceedings [18, point 32].

According to *Tsonyo Tsonev v. Bulgaria* from 16 October 2012, item 43 indicates the fact that the testimony emanated from an officer who had already dealt with the applicant and had taken part in the uncovering of the offence does not in itself raise a fairness issue. The applicant was able to cross-examine the officer and challenge the truthfulness of his statement. The applicant called two witnesses with a view to undermining the officer's credibility. After hearing those witnesses and organising a confrontation between them and the officer, the Appellate Court specifically found, in a reasoned ruling, that there were no grounds to doubt the accuracy of the officer's testimony [19, point 44].

Conclusions. Witness statements can be used at various stages of the criminal trial, in the prosecution process and during the trial.

Taking into account the autonomous meaning of „witness" in the Convention system, its statements are a valuable tool in fighting crime, but it is crucial to respect individual rights and ensure that these statements are used fairly and fairly within the legal system.

Thus, if the case of a co-defendant was disjointed in connection with the request to examine the case on the basis of the procedure provided for in article 364/1 of the Criminal Procedure Code, it is possible to hear him as a witness, since the principle of presumption of innocence is not violated. They will be called upon to give statements to persons who have been tried in the simplified procedure. The statements of these persons may not have a pre-established evidentiary value, being appreciated in conjunction with other evidence. Any conviction must be based on sufficient evidence to remove any doubt about the person's innocence.

In the case of investigation officers, these persons may also be heard as witnesses in the criminal proceedings, as they do not fall under article 90 para.(3) pct.4) of the Criminal Procedure Code (where expressly indicated are persons who cannot be summoned and heard as witnesses in a criminal trial).

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TACTICAL PARTICULARITIES OF THE DEFENSE APPLIED IN THE CRIMINAL PROCESS

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Summary

The article's purpose is to analyze the objective and subjective factors that determine the construction of defense tactics in a criminal trial. Thus, the conceptual desirability of these factors and the characteristics of their application by the defense in its activity during the trial are examined. The authors also recommended some tactics that should be taken into consideration by the defense side in its activity.

Keywords: criminalistics tactics, defense tactics, asymmetry of the criminal process, attorney.

Introduction. Like any other sphere of daily life (social-economic, political, cultural, etc.), the branch of law has evolved under the impact of the norms that have been adopted over time at the international level. Internal regulations are connected to them, and even many of the fundamental principles formulated in antiquity are perfectly applicable even today.

The principle of guaranteeing the right of defense still enshrined in Roman law, in which was written the rule that no one can be tried, not even a slave, without being defended ~~is~~ considered as a requirement and guarantee necessary to achieve a balance between the interests of the person and those of society [1].

The right to defense is a right recognized in all procedural systems in democratic states, this being a natural consequence of the ratification of international documents that expressly enshrine this right, among the most important are:

– **The Universal Declaration of Human Rights** stipulates in Art. 11, point (1): "*Any person accused of committing a criminal act has the right to be presumed innocent until his guilt is legally established during a public trial in which he was provided with all the necessary guarantees for his defense".*

– **The International Pact on Civil and Political Rights** regulates in Art. 14, point (3), the fact that: "*Any person accused of committing a criminal offense has the right, under conditions of full equality, to at least the following guarantees: a) to be informed as soon as possible, in a language he understands and in detail, about the nature and reasons of the accusation brought against him; b) to have the time and facilities necessary to prepare his defense and to communicate with the defender he chooses; c) to be judged without excessive delay; d) to be present at the trial and defend herself or*

have the assistance of a defense attorney chosen by her; if she does not have a defense attorney, to be informed of the right to have one and, whenever the interest of justice requires it, to be assigned a defense attorney ex officio, without payment if she does not have the means to pay him; e) to interrogate or cause to be interrogated the witnesses of the prosecution and to obtain the appearance and interrogation of the witnesses of the defense under the same conditions as those of the witnesses of the prosecution; f) to benefit from the free assistance of an interpreter, if he does not understand or speak the language used at the court session; g) not to be forced to testify against herself or to plead guilty".

– **The European Convention for the Protection of Human Rights and Fundamental Freedoms,** indicates in Art. 6, point (3): "*Any accused has, in particular, the right: a) to be informed, in the shortest possible time, in a language that he understands it in detail, on the nature and cause of the accusation brought against him; b) to have the time and facilities necessary to prepare his defense; c) defend himself or be assisted by a defense attorney chosen by him and, if he does not have the necessary means to pay a defense attorney, be able to be assisted free of charge by an ex officio lawyer, when the interests of justice require it; d) to ask or request the hearing of prosecution witnesses and obtain the summons and hearing of defense witnesses under the same conditions as prosecution witnesses; e) to be assisted free of charge by an interpreter, if he does not understand or speak the language used at the hearing".*

– The Charter of Fundamental Rights of the European Union in Art. 47 para.(2), provides: *"Every person has the right to a fair trial, public and within a reasonable time, before an independent and impartial court, established in advance by law. Every person has the opportunity to be advised, defended and represented." And in para.(3): "Free legal assistance is granted to those who do not have sufficient resources, to the extent that this is necessary to ensure effective access to justice." Moreover, the provisions of the Charter enshrine in Art. 48, paragraph (2) the right to defense, providing that "any accused person is guaranteed respect for the right to defense".*

From the above, it is highlighted that the regulations of the right to defense are contained in numerous international treaties, regulations that were also transposed at the national level in the Constitution, Criminal Procedure Code, the Law on Advocacy No. 1260 of 19.07.2022. Concerns regarding the defense tactics adopted by the defense in the criminal trial, we will not find any express regulations, it differs from case to case, considering that each case is unique. However, the achievement of the goals of the defense follows to be carried out by legal means and methods.

Articol aim. This article addresses the tactics of the defense in the criminal process in the Republic of Moldova, in which are rendered the conditions for the implementation of tactical actions, the asymmetry of the criminal process, as well as specific tactical recommendations are suggested.

Methods and materials applied. An extensive series of research methods were used in the process of developing the study, among which we list: the analysis method, the synthesis method, the induction and deduction method, the systemic and the static method.

Discussions and results obtained. Scientific research has set the basic task of criminalistics tactics in the criminal process, by which they have given the criminal investigation body a series of levers, methods, strategies for discovery, research, of different categories of crimes, both on hot traces and after the leakage of a certain periods of time, while the defensive tactic was left in the shadows, being considered less important for the administration of justice. While this has a rather important role for the defense of the rights and legitimate interests of each subject in the criminal process, who benefits from the presumption of innocence during the criminal process, until all appeals are exhausted.

The lawyer's participation in the trial process must be the basis for the development of professional defense tactics. Namely, such an approach to this problem contributes to the development of maximum efficiency recommendations and to the improvement of the activity of the

defense lawyer in criminal matters [2].

According to G.M. Şafi, "*tactics is an art that combines the legal means of defense, which allow the defender to fulfill his task in the most successful way*" [3].

As mentioned by R.M. Jamieva, the interests of the client are undoubtedly important to a lawyer, only if their achievement does not exceed legal limits. No one has the right to prohibit the use of legal methods of presenting counterarguments on the part of the defense in the interest of the client. The issue of the admissibility of tactical defense methods is more than relevant for a lawyer, as it can affect his future professional career. The discrepancy between the goals of the defense and those of the prosecution is natural (must not coincide by definition) in the context of competing activities [4].

The bond between the lawyer and the client starts from the first address, the first contact of the client with his lawyer. Establishing the rules of the game and the psychological contact between them, the client is obliged to reveal to his lawyer all the circumstances in which the criminal act was committed, even if some seem to be more secret or of a personal nature, he is obliged to give the lawyer all the details down to the most detailed so that the lawyer can get to the essence of the case and then choose a defense tactic.

Considering that the people who request the intervention of a lawyer most often do not have legal studies, for them it would seem that not all the details of the litigation are important for the solution of the problem. That is why lawyers are obliged to have a long discussion with the client when drawing up the legal assistance contract in order to get to the essence of the circumstances of the case and ask the client as many questions as possible. However, for the lawyer, every word is of particular importance when solving the issues raised and choosing the way to defend the client.

The choice of a certain defense tactic by the lawyer is conditioned by several objective and subjective factors. However, the role of the lawyer is sometimes confused and it is considered that he must, for any purpose, save the client from criminal punishment. Thus, among the first factors that influence the choice of a certain defense strategy is the conduct of the client and the expectations he has from the lawyer. Defense tactics do not presuppose active conduct, in some cases, it is more convenient to wait for the results of the criminal investigation.

However, if we are talking about a real defense tactic, in complex, interesting cases, then it can certainly be compared to a game of checkers, where it is important to anticipate the moves that the prosecution will make.

It cannot be overlooked that another factor, which influences the process of choosing defense tactics in a criminal trial, is the asymmetry of the criminal trial, from the point of view of realizing the right to defense.

The lawyer participates in a criminal trial always in a foreign territory and controlled by a representative of the state authorities such as: in the courtroom by the judge, in the office of the criminal investigation officer or the prosecutor where different procedural actions are carried out, by the representatives of the party of the accusation [5].

Even most of the evidence requested by the defense must follow the same rules (witnesses from the defense are heard in the office of the prosecution, expertise is provided by the representative of the criminal investigation body, the collection of objects and documents is the same).

Thus, regardless of the situation created and the place where the lawyer participates in the administration of justice, he is obliged in any situation to act in such a way as not to endanger the rights and freedoms of his client. If the criminal investigation body, the prosecutor and the judge are the main arbitrators who manage the criminal case and know from the beginning what actions they will take in the future with a certain period of time at their disposal, the lawyer is the figure who does not know the steps they are going to take the representatives of the state, he is always obliged to intervene in the shortest possible time with a special skill, in order to choose his

defense tactics that do not exceed the legal framework within which to defend his client's rights and interests.

Due to the fact that the defense side in the criminal process is in an unequal position, this makes it difficult to build defense tactics, because once arrived for the provision of defense services, the lawyer does not know anything other than the materials that are made available to him by the officer prosecution or prosecutor. In the most frequent cases, the lawyer is provided with the order recognizing the person as a suspect, the arrest report and the order regarding the initiation of criminal prosecution. Although these documents contain sufficient data regarding the committed act, the defense has no way of knowing what statements the witnesses and the injured party made.

Acknowledging these documents and being told the circumstances of the case by the potential client, the lawyer begins to choose his defense tactics. Most often, lawyers resort to the method by which they explain to the client the right not to submit statements at the initial stage, since they are not aware of the materials of the criminal case.

Participating in the first criminal investigation actions, the lawyer already begins to create a picture through which he deepens the essence of the case, after which he begins to submit various requests and complaints to the criminal investigation body, which aim both to remove the client from under criminal prosecution, as well as getting to know some materials to which he does not have access. In some cases where the crimes have minor sanctions, these requests aim for nothing more than the intervention of the statute of limitations to bring the person to criminal liability, so another factor that contributes to the choice of defense tactics is the nature of the committed act.

A large part of lawyers choose the path by which their clients generally do not submit statements at the criminal investigation stage, whether he is suspected or accused, and then, after becoming fully aware of the materials of the criminal case, decide what statements to submit in the court.

In the chapter of defense tactics in which lawyers choose the way to interfere with the limitation period within which a person can be held criminally liable, some lawyers persistently submit various categories of requests or complaints starting from the stage of criminal prosecution and continuing with the examination of the case in the court of substance until the adoption of the sentence, as the case may be, and on appeal. In such situations, some lawyers request from the criminal investigation body some documents about which they know with certainty that the criminal investigation body does not have such documents, submit various requests by which they request the recusal of either the criminal investigation officer, the prosecutor, or as the case may be, the judge . In some cases, he does not appear at the summons of the criminal investigation body or the court, or knowing with certainty that for the day on which certain criminal investigation actions are to be carried out, he will be involved in other court hearings or investigation actions criminal case, he informs the person who cites him that he is available, and then announces that there have been some changes and requests that the planned actions be countermanded.

Conclusions. Generally, the following tactics can be recommended to the defense side in criminal proceedings:

1. Not to change the position of the defense side. The Criminal Procedure Code of the Republic of Moldova does not contain a prohibition of such a change, however, a change of position can be perceived with caution by the criminal investigation body and the court, and in the end it can generate unfavorable consequences for the defendant.

2. It is necessary to present the position of the defense in such a way as to inspire confidence in the participants of the criminal trial. The lawyer must pay attention to the behavior of the client both during the prosecution and in court.

3. A lawyer must develop the qualities of a quick reaction, the ability to orient oneself in a rapidly changing situation, in particular, in case of unexpected turns of the investigation that are

not in favor of the accused or the defendant. Therefore, an important task for a lawyer is to develop the quality of stress resistance [6].

4. Considering the publicity of the trial, and in connection with it, the possibility of the presence of third parties in a public meeting, including representatives of the media, a lawyer must be restrained and not give in to possible challenges.

5. It is necessary to acquire the most important professional skill of a defender – to be able to formulate precise and detailed questions about the circumstances of the alleged act committed.

6. To deal with witnesses properly and to use special tactics when interviewing them. It is necessary to present the defense witness in a light favorable to the defense, to create a certain image of confidence in the truthfulness of his statements. And, vice versa, creating all the premises for instilling mistrust in the statements of the prosecution witness.

7. To use non-standard, innovative approaches to the conduct of defense, to develop the ability to improvise.

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STATES OBLIGATION TO PROTECT VICTIMS OF HUMAN TRAFFICKING THROUGH THE LENS OF EUROPEAN JURISPRUDENCE

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Summary

Despite progress in recent years, trafficking in human beings remains a serious threat in the EU. Victims are mainly women and girls trafficked for sexual exploitation. The third Trafficking in Human Beings Progress Report, published in October 2020, provides a factual overview of progress, includes patterns of the phenomenon as well as challenges and key issues in the fight against trafficking in the EU [5]. As the crime of trafficking in human beings is often committed by organised groups, the Anti-Trafficking Strategy is closely linked to the EU Strategy on Combating Organised Crime, also presented today. Protecting society against organised crime and, in particular, combating trafficking in human beings is a priority in the new EU strategy for a security union.

The European Commission presented on April 14, 2021, a new strategy to combat trafficking in human beings (2021-2025), focusing on preventing crime, bringing traffickers to justice, protecting victims and strengthening their capacity to act.

The strategy builds on the comprehensive legal and policy framework put in place at EU level to tackle trafficking in human beings, based on the EU Anti-Trafficking Directive. The Commission will continue to support Member States in the implementation of the Directive and, if necessary, propose its revision to ensure it is fit for purpose. The EU Anti-Trafficking Coordinator will continue to play a key role in the implementation of this strategy.

The strategy focuses on: reducing the demand that fosters trafficking, disrupt the business model of traffickers, protecting, supporting and empowering victims, with a particular focus on women and children, promoting international cooperation, given that half of the victims identified in the EU are non-EU nationals, cooperation with international partners is therefore essential to combat trafficking in human beings.

Keywords: trafficking, global phenomenon, protection, human rights.

Introduction regarding human trafficking. Considering that at the international level there is no universal legal instrument that includes measures aimed at preventing human trafficking, but also actions regarding the punishment of traffickers and the protection of victims of this trafficking, the UN General Assembly, through Resolution 53/111 of December 9, 1998, created an intergovernmental committee, whose mandate was to develop an international instrument to fight against trafficking in women and children. In this sense, the Protocol on the prevention, repression and punishment of human trafficking, especially of women and children, was developed. The Protocol was adopted by the UN General Assembly through Resolution 55/25 and entered into force on December 25, 2003, being the first binding global legal instrument with a definition of human trafficking [1].

The purpose of the protocol is to harmonize national legislation in the sense of the criminalization of human trafficking, harmonization that will allow for international cooperation in investigating and punishing cases of human trafficking. An additional objective of the Protocol is the protection and assistance of victims of human trafficking, respecting their internationally recognized fundamental rights. The Protocol complements the Palermo Convention in the sense that the Protocol is to be interpreted together with the Convention.

The Protocol defines trafficking in persons as involving the recruitment, transportation,

transfer, harboring or receiving of persons by threat, recourse or recourse to force or other forms of coercion, by kidnapping, fraud, deception, abuse of authority or a situation of vulnerability or by offering or accepting payments or advantages to obtain the consent of a person, having authority over another for the purpose of exploitation. Exploitation includes, at least, exploitation through the prostitution of another person or other forms of exploitation, such as forced labor or services, slavery or practices similar to slavery, the use or removal of organs1 [1, Art.3, letter a)].

In the sense of the Protocol, the consent of a victim is irrelevant when any of the means stated above has been used. It is also important to note that recruiting, transporting, transferring, harboring or receiving a child (any person under the age of 18) for the purpose of exploitation is considered human trafficking, even if none of the above means are used stated.

Regarding the scope of application, it is stipulated that the Protocol is to be applied in the event that the crimes mentioned above are of a transnational nature and if a criminal group is involved, but also for the protection of the victims of the crime. Considering the definition mentioned above, it is indubitable that human trafficking involves three constitutive elements:

a) *the action*, consisting in recruiting, transporting, transferring, sheltering or receiving a person;

b) *the means*, consisting of threats, recourse to force or other forms of coercion, kidnapping, fraud, deception, abuse of authority or a situation of vulnerability or by offering or accepting payments or advantages, in order to gain control over the victim;

c) *the purpose*, consisting of exploitation, which includes the exploitation of a person through prostitution or other forms of exploitation, such as forced labor or services, slavery or practices similar to slavery, the use or removal of organs.

The definition of *human trafficking*, accredited by the Protocol, has the role of creating an international consensus on the phenomenon of human trafficking, so that the states parties adopt the necessary legislative measures to criminalize human trafficking.

Analyzing, the provisions of Art. 5 of the Protocol [1], it follows that the party states are not obliged to adopt exactly the terminology used in its contents, but they have the assumed conventional obligation to adapt the national legislation, so as to give effect to the concepts regulated in the Protocol's contents. The definitions should be dynamic and flexible, so as to ensure an adequate and efficient response to the phenomenon of human trafficking, additionally considering the following aspects: human trafficking occurs both within national borders and outside them; the purposes of exploitation can be multiple and under no circumstances should it be reduced to sexual exploitation; victims of trafficking are children, women and men; human trafficking occurs with or without the involvement of organized crime groups.

EU legal framework on human trafficking and victim protection. At EU level, human trafficking is recognised as a violation of fundamental rights, explicitly prohibited by Article 5 of the EU Charter of Fundamental Rights. Article 83 of the Treaty on the Functioning of the European Union (TFEU) identifies 'trafficking in human beings and sexual exploitation of women and children' among serious crimes with a cross-border dimension for which there is a possibility to establish common minimum rules on the definition of criminal offences and sanctions. Article 82(2) TFEU concerning the rights of individuals in criminal procedure and the rights of victims of crime and Article 79 TFEU on immigration policy provide complementary bases for EU action in this area.

The main EU instrument addressing human trafficking is Directive 2011/36/EU – the Anti-trafficking Directive – adopted in 2011. The directive builds on the UN Trafficking Protocol and the Council of Europe's Convention on Action against Trafficking in Human Beings. It also represents a step further from the 2002 Council Framework Decision, which focused on crime

[1] Article 3, letter a) of the Protocol on the prevention, suppression and punishment of trafficking in persons, especially women and children.

control and left little room for prevention and victim protection [3, p.72]. The directive adopts a victim-centred approach and, in addition to prosecution of offenders, addresses prevention and support, which must be gender-specific and child-sensitive. It recognises that women and men are often trafficked for different purposes, and that assistance and support measures should therefore also be gender-specific. It also seeks to undermine demand for services provided by victims of trafficking, by requiring Member States to consider criminalising the knowing use of services resulting from the exploitation of trafficking victims.

At EU level, Directive 2009/52/EC (the Employers' Sanctions Directive) already criminalises demand for the labour of trafficked persons. It provides for minimum standards on sanctions and measures against employers who use the work or services of illegally staying third-country nationals knowing that they are victims of human trafficking. In addition, Directive 2011/93/EU (the Child Sexual Abuse Directive) defines as a criminal offence the fact of engaging in sexual activity with children in the context of child prostitution, thus contributing indirectly to combating child trafficking for sexual exploitation (in this case, the conduct is punishable independently of the awareness of the client about the trafficking condition of the victim).

Protection of victims is another important element of the EU's anti-trafficking efforts. According to EU law, victims of human trafficking have a number of rights, including the right to assistance and health care, labour rights, access to justice, legal defence and compensation [4]. As regards protecting and assisting victims, Directive 2012/29/EU (the Victims' Rights Directive) obliges Member States to ensure that victims of crime – including victims of human trafficking, who often require special support and protection because of the high risk of secondary and repeat victimisation, intimidation and retaliation – receive appropriate information, support and protection. Moreover, Directive 2004/81/EC defines the conditions for granting residence permits to third-country victims of human trafficking who cooperate with the competent authorities. It also states that it is for Member States to lay down the rules on victims' access to the labour market.

Policy framework and operational cooperation. While Member States bear primary responsibility for eradicating human trafficking, the European Commission coordinates their efforts and sets priorities through dedicated policy documents and mechanisms.

The first EU dedicated strategy was adopted in 2012. It provided guidelines on how to transpose and implement Directive 2011/36/EU and defined a series of measures to address the gender dimension of trafficking. The Commission updated the strategy in 2017, identifying further concrete actions aimed at disrupting traffickers' business models, enabling victims to exercise their rights more effectively and improving coordination of the internal and external aspects of EU action. In April 2021 – ten years after the adoption of the Anti-trafficking Directive – the Commission presented its new strategy on combatting trafficking in human beings for the 2021-2025 period. The strategy adopts a comprehensive approach, encompassing prevention, protection of victims and prosecution of offenders. It focuses on early identification of victims and facilitating their re- integration (with a specific focus on women and children), on ways to turn trafficking into high-risk and low-return crime, on reducing demand for services and on promoting international cooperation.

Implementation of the EU strategy is monitored by the EU anti-trafficking coordinator (EU ATC). The coordinator's main task is to improve coordination between EU institutions, EU agencies, Member States, third countries and international actors, and to increase the coherence between different policy fields, such as police and judicial cooperation, protection of human rights, external relations, migration policies and social and labour law.

The EU ATC also facilitates the work of the EU network of national rapporteurs or equivalent mechanisms (NREMs), established following the Council conclusions of June 2009. The NREMs, appointed by all Member States as required by the Anti-trafficking Directive, are responsible for monitoring implementation of anti-trafficking policy at national level, and play a crucial role in

collecting data on human trafficking at both national and EU levels.

In addition, an EU Civil Society Platform against Trafficking in Human Beings was launched in 2013 and gathers around 100 civil society organisations from all over the EU and selected priority non-EU Member States. In 2014, the Platform was complemented by an online ePlatform to include additional participants [5].

The role of the relevant EU agencies has been significantly stepped up since 2011, when seven of them – Europol, Eurojust (EU Agency for Criminal Justice Cooperation), CEPOL (EU Agency for Law Enforcement Training), EASO (European Asylum Support Office), EIGE, FRA (EU Agency for Fundamental Rights) and Frontex (European Border and Coast Guard Agency) – signed a joint statement, committing to work closely together to address human trafficking, according to their areas of competence, which range from gathering intelligence and facilitating prosecution in trafficking cases, to coordinating Member States' efforts to support victims and prevent (repeat) victimization [6, p.3]. The commitment was renewed in 2018, with the additional involvement of three other EU agencies: EU-LISA (EU Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice), EMCDDA (European Monitoring Centre for Drugs and Drug Addiction) and Eurofound (European Foundation for the Improvement of Living and Working Conditions).

As key EU actors in police and judicial cooperation, Europol and Eurojust play a central role. In 2019, Europol launched an operational platform – the Joint Liaison Task Force Migrant Smuggling and Trafficking in Human Beings (JLT-MS) – coordinated by its European Migrant Smuggling Centre (EMSC) to facilitate the joint development of operational strategies and execute cross-border operations, as well as to support investigations of an increased number of high priority cases. Eurojust, meanwhile, facilitates cross-border cooperation on investigation and prosecution and has seen its caseload relating to human trafficking grow over the years [3, p.73].

The fight against human trafficking for all forms of exploitation is also a priority of the 2018-2021 EU policy cycle for organised and serious international crime (EMPACT), the four-year plan to combat crime adopted by the Council in 2017. It has been identified once again as one of the 10 EU crime priorities agreed by the Council for the coming 2022-2025 policy cycle, based on recommendations from Europol's Serious and Organised Crime Threat Assessment (SOCTA 2021) [3].

The way EU member states have used European legal instruments to protect victims of human trafficking (examples of real cases). The absence of an express reference to trafficking in the [European] Convention [on Human Rights] is unsurprising. The Convention was inspired by the Universal Declaration of Human Rights, proclaimed by the General Assembly of the United Nations in 1948, which itself made no express mention of trafficking. In its Article 4, the Declaration prohibited 'slavery and the slave trade in all their forms'.

However, in assessing the scope of Article 41 of the Convention, sight should not be lost of the Convention's special features or of the fact that it is a living instrument which must be interpreted in the light of present-day conditions. The increasingly high standards required in the area of the protection of human rights and fundamental liberties correspondingly and inevitably require greater firmness in assessing breaches of the fundamental values of democratic societies (…). The [European] Court [of Human Rights] notes that trafficking in human beings as a global phenomenon has increased significantly in recent years (…). In Europe, its growth has been facilitated in part by the collapse of former Communist blocs. The conclusion of the Palermo Protocol in 2000 and the Anti-Trafficking Convention in 2005 demonstrate the increasing recognition at international level of the prevalence of trafficking and the need for measures to combat it [2, §§ 277-278].

Rantsev v. Cyprus and Russia 7 January 2010. The applicant was the father of a young woman who died in Cyprus where she had gone to work in March 2001. He complained that the Cypriot police had not done everything possible to protect his daughter from trafficking while she had been alive and to punish those responsible for her death. He also complained about the failure of

the Russian authorities to investigate his daughter's trafficking and subsequent death and to take steps to protect her from the risk of trafficking.

The European Court of Human Rights noted that, like slavery, trafficking in human beings, by its very nature and aim of exploitation, was based on the exercise of powers attaching to the right of ownership; it treated human beings as commodities to be bought and sold and put to forced labour; it implied close surveillance of the activities of victims, whose movements were often circumscribed; and it involved the use of violence and threats against victims. Accordingly the Court held that trafficking itself was prohibited by Article 4 (prohibition of slavery and forced labour) of the European Convention on Human Rights2 [2]. It concluded that there had been a violation by Cyprus of its positive obligations arising under Article 4 of the Convention on two counts: first, its failure to put in place an appropriate legal and administrative framework to combat trafficking as a result of the existing regime of artiste visas, and, second, the failure of the police to take operational measures to protect the applicant's daughter from trafficking, despite circumstances which had given rise to a credible suspicion that she might have been a victim of trafficking. The Court held that there had also been a violation of Article 4 of the Convention by Russia on account of its failure to investigate how and where the applicant's daughter had been recruited and, in particular, to take steps to identify those involved in her recruitment or the methods of recruitment used. The Court further held that there had been a violation by Cyprus of Article 2 (right to life) of the Convention, as a result of the failure of the Cypriot authorities to investigate effectively the applicant's daughter's death.

*V.F. v. France (Application No. 7196/10) 29 November 2011 (decision on the admissibility)*3 [2]. This case concerned the proceedings for the applicant's deportation to Nigeria, her country of origin. The applicant alleged in particular that if she were expelled to Nigeria she would be at risk of being forced back into the prostitution ring from which she had escaped and being subjected to reprisals by those concerned, and that the Nigerian authorities would be unable to protect her. In her view, the French authorities were under a duty not to expel potential victims of trafficking.

The Court declared the application inadmissible (manifestly ill-founded). While it was well aware of the scale of the trafficking of Nigerian women in France and the difficulties experienced by these women in reporting to the authorities with a view to obtaining protection, it nevertheless considered, in particular, that the information provided by the applicant in this case was not sufficient to prove that the police knew or should have known when they made the order for her deportation that the applicant was the victim of a human trafficking network. As to the risk that the applicant would be forced back into a prostitution ring in Nigeria, the Court observed that, while the Nigerian legislation on preventing prostitution and combating such networks had not fully achieved its aims, considerable progress had nevertheless been made and it was likely that the applicant would receive assistance on her return.

M. and Others v. Italy and Bulgaria (No. 40020/03) July 31, 2012. The applicants, of Roma origin and Bulgarian nationality, complained that, having arrived in Italy to find work, their daughter was detained by private individuals at gunpoint, was forced to work and steal, and sexually abused at the hands of a Roma family in a village. They also claimed that the Italian authorities had failed to investigate the events adequately.

The Court declared the applicants' complaints under Article 4 (prohibition of slavery and forced labour) inadmissible as being manifestly ill-founded. It found that there had been no evidence supporting the complaint of human trafficking. However, it found that the Italian authorities had not effectively investigated the applicants' complaints that their daughter, a minor at the time, had been repeatedly beaten and raped in the villa where she was kept. The Court therefore

[2] 1. Article 4 (prohibition of slavery and forced labour) of the European Convention on Human Rights provides that: "1. No one shall be held in slavery or servitude. 2. No one shall be required to perform forced or compulsory labour. (...)."
[3] See also: Idemugia v. France, Decision on the admissibility of 27 March 2012.

held that there had been a violation of Article 3 (prohibition of inhuman or degrading treatment) of the Convention under its procedural limb. The Court lastly held that there had been no violation of Article 3 of the Convention in respect of the steps taken by the Italian authorities to release the first applicant.

F.A. v. the United Kingdom (No. 20658/11) September 10, 2013 (Decision on the admissibility). The applicant, a Ghanaian national, alleged that she had been trafficked to the United Kingdom and forced into prostitution. She complained in particular that her removal to Ghana would put her at risk of falling into the hands of her former traffickers or into the hands of new traffickers. She further alleged that, as she had contracted HIV in the United Kingdom as a direct result of trafficking and sexual exploitation, the State was under a positive obligation to allow her to remain in the United Kingdom to access the necessary medical treatment.

The Court declared the applicant's complaints under Articles 3 (prohibition of inhuman or degrading treatment) and 4 (prohibition of slavery and forced labour) inadmissible. It noted in particular that the applicant could have raised all of her Convention complaints in an appeal to the Upper Tribunal. By not applying for permission to appeal to the Upper Tribunal, she had failed to meet the requirements of Article 35 § 1 (admissibility criteria) of the Convention.

L.E. v. Greece (No. 71545/12) January 21, 2016. This case concerned a complaint by a Nigerian national who was forced into prostitution in Greece. Officially recognised as a victim of human trafficking for the purpose of sexual exploitation, the applicant had nonetheless been required to wait more than nine months after informing the authorities of her situation before the justice system granted her that status. She submitted in particular that the Greek State's failings to comply with its positive obligations under Article 4 (prohibition of slavery and forced labour) of the Convention had entailed a violation of this provision.

The Court held that there had been a violation of Article 4 (prohibition of forced labour) of the Convention. It found in particular that the effectiveness of the preliminary inquiry and subsequent investigation of the case had been compromised by a number of shortcomings. With regard to the administrative and judicial proceedings, the Court also noted multiple delays and failings with regard to the Greek State's procedural obligations. In this case the Court also held that there had been a violation of Article 6 § (1) (right to a fair trial within a reasonable time) of the Convention, finding that the length of the proceedings in question had been excessive for one level of jurisdiction and did not meet the "reasonable time" requirement. Lastly, the Court held that there had been a violation of Article 13 (right to an effective remedy) of the Convention, on account of the absence in domestic law of a remedy by which the applicant could have enforced her right to a hearing within a reasonable time.

J. and Others v. Austria (no. 58216/12) 17 January 2017. This case concerned the Austrian authorities' investigation into an allegation of human trafficking. The applicants, two Filipino nationals, who had gone to work as maids or au pairs the United Arab Emirates, alleged that their employers had taken their passports away from them and exploited them. They claimed that this treatment had continued during a short stay in Vienna where their employers had taken them and where they had eventually managed to escape. Following a criminal complaint filed by the applicants against their employers in Austria, the authorities found that they did not have jurisdiction over the alleged offences committed abroad and decided to discontinue the investigation into the applicants' case concerning the events in Austria. The applicants maintained that they had been subjected to forced labour and human trafficking, and that the Austrian authorities had failed to carry out an effective and exhaustive investigation into their allegations. They argued in particular that what had happened to them in Austria could not be viewed in isolation, and that the Austrian authorities had a duty under international law to investigate also those events which had occurred abroad. The Court, finding that the Austrian authorities had complied with their duty to protect the applicants as (potential) victims of human trafficking, held that there had

been no violation of Article 4 (prohibition of forced labour) and no violation of Article 3 (prohibition of inhuman or degrading treatment) of the Convention. It notably noted that there had been no obligation under the Convention to investigate the applicants' recruitment in the Philippines or their alleged exploitation in the United Arab Emirates, as States are not required under Article 4 of the Convention to provide for universal jurisdiction over trafficking offences committed abroad. Turning to the events in Austria, the Court concluded that the authorities had taken all steps which could have reasonably been expected in the situation. The applicants, supported by a government-funded NGO, had been interviewed by specially trained police officers, had been granted residence and work permits in order to regularise their stay in Austria, and a personal data disclosure ban had been imposed for their protection. Moreover, the investigation into the applicants' allegations about their stay in Vienna had been sufficient and the authorities' resulting assessment, given the facts of the case and the evidence available, had been reasonable. Any further steps in the case – such as confronting the applicants' employers – would not have had any reasonable prospect of success, as no mutual legal assistance agreement existed between Austria and the United Arab Emirates, and as the applicants had only turned to the police approximately one year after the events in question, when their employers had long left the country.

Chowdury and others v. Greece March 30, 2017. The applicants – 42 Bangladeshi nationals – were recruited in Athens and other parts of Greece between the end of 2012 and early 2013, without a Greek work permit, to work at the main strawberry farm in Manolada. Their employers failed to pay the applicants' wages and obliged them to work in difficult physical conditions under the supervision of armed guards. The applicants alleged that they had been subjected to forced or compulsory labour. They further submitted that the State was under an obligation to prevent their being subjected to human trafficking, to adopt preventive measures for that purpose and to punish the employers.

The Court held that there had been a violation of Article 4 § (2) (prohibition of forced labour) of the Convention, finding that the applicants had not received effective protection from the Greek State. The Court noted, in particular, that the applicants' situation was one of human trafficking and forced labour, and specified that exploitation through labour was one aspect of trafficking in human beings. The Court also found that the State had failed in its obligations to prevent the situation of human trafficking, to protect the victims, to conduct an effective investigation into the offences committed and to punish those responsible for the trafficking.

T.I. and Others v. Greece (no. 40311/10) 18 July 2019. In this case, three Russian nationals claimed that they had been victims of human trafficking. They alleged in particular that they had been forced to work as prostitutes in Greece and complained that the Greek authorities had failed to fulfil their obligations to criminalise and prosecute acts relating to human trafficking. They further complained of inadequacies and shortcomings in the investigation and the judicial proceedings.

The Court held that there had been a violation of Article 4 (prohibition of forced labour) of the Convention, finding that the legal framework governing the proceedings had not been effective and sufficient either to punish the traffickers or to ensure effective prevention of human trafficking. It noted in particular that the competent authorities had not dealt with the case with the level of diligence required and that the applicants had not been involved in the investigation to the extent required under the procedural limb of Article 4.

S.M. v. Croatia (no. 60561/14) June 25, 2020 (Grand Chamber). This case concerned a Croatian woman's complaint of human trafficking and forced prostitution. The applicant complained of an inadequate official procedural response to her allegations.

The Court held that there had been a violation of Article 4 (prohibition of forced labour) of the Convention on account of the shortcomings in the Croatian authorities' investigation into the applicant's allegation of forced prostitution. Taking the opportunity via the applicant's case to

clarify its case-law on human trafficking for the purpose of exploitation of prostitution, the Court pointed out in particular that it relied on the definition under international law to decide whether it could characterise conduct or a situation as human trafficking under Article 4 of the Convention and therefore whether that provision could be applied in the particular circumstances of a case. The Court also clarified that the notion of "forced or compulsory labour" under Article 4 of the Convention aimed to protect against instances of serious exploitation, such as forced prostitution, irrespective of whether, in the particular circumstances of a case, they were related to the specific human trafficking context. It found that Article 4 could be applied in the applicant's case as certain characteristics of trafficking and forced prostitution had arguably been present, such as abuse of power over a vulnerable individual, coercion, deception and harbouring. In particular, the applicant's alleged abuser was a policeman, while she had been in public care from the age of 10, and he had first contacted her by Facebook, leading her to believe that he would help her to find a job. Instead, he had arranged for her to provide sexual services, either in the flat he had rented or by driving her to meet clients. That situation meant that the prosecuting authorities had been under an obligation to investigate the applicant's allegations. However, they had not followed all obvious lines of enquiry, notably they had not interviewed all possible witnesses, and therefore in the court proceedings it had been a question of the applicant's word against her alleged abuser's. Such shortcomings had fundamentally undermined the domestic authorities' ability to determine the true nature of the relationship between the applicant and her alleged abuser and whether she had indeed been exploited by him.

V.C.L. and A.N. v. the United Kingdom (No. 77587/12 and No. 74603/12) February 16, 2021. This case concerned two Vietnamese men who, while still minors, were charged with – and subsequently pleaded guilty to – drug-related offences after they were discovered working as gardeners in cannabis factories in the United Kingdom. Following their convictions they were recognised as victims of trafficking by the designated Competent Authority responsible for making decisions on whether a person has been trafficked for the purpose of exploitation: this Authority identifies potential victims of modern slavery and ensures they receive the appropriate support. The applicants complained, mainly, of a failure on the part of the authorities to protect them in the aftermath of their trafficking, that the authorities had failed to conduct an adequate investigation into their trafficking, and of the fairness of their trial.

This was the first time the Court had to consider the relationship between Article 4 of the Convention and the prosecution of victims and potential victims of trafficking. In the present case, it held that there had been a violation of Article 4 (prohibition of forced labour) of the Convention, finding that the domestic authorities had failed to take adequate operational measures to protect the applicants, both of whom had been potential victims of trafficking. The Court noted in particular that despite the applicants being discovered in circumstances which indicated that they had been victims of trafficking, they had been charged with a criminal offence to which they pleaded guilty on the advice of their legal representatives, without their case first being assessed by the Competent Authority. Even though they were subsequently recognised by the Competent Authority as victims of trafficking, the prosecution service, without providing adequate reasons for its decision, disagreed with that assessment and the Court of Appeal, relying on the same inadequate reasons, found that the decision to prosecute was justified. The Court considered this to be contrary to the State's duty under Article 4 of the Convention to take operational measures to protect the applicants, either initially as potential victims of trafficking or subsequently as persons recognised by the Competent Authority to be the victims of trafficking. In the present case, the Court also considered that the proceedings as a whole had not been fair, in violation of Article 6 § 1 (right to a fair trial) of the Convention4 [2].

[4] See also: G.S. v. the United Kingdom (No. 7604/19), Decision on the admissibility of 23 November 2021.

A.I. v. Italy (No. 70896/17) April 1, 2021. This case concerned the inability of the applicant, a Nigerian refugee, mother of two children, who had been a victim of trafficking and was in a vulnerable position, to enjoy access rights owing to a court-ordered prohibition on contact, in a situation where the proceedings concerning the children's eligibility for adoption had remained pending for over three years.

The Court held that there had been a violation of Article 8 (right to respect for family life) of the Convention, finding that insufficient weight had been attached to the importance of a family life for the applicant and her children in the proceedings which resulted in the cessation of contact between them. Thus, the proceedings had not been accompanied by safeguards that were proportionate to the seriousness of the interference and the interests at stake. The Court noted in particular that the applicant had been the victim of human trafficking. The authorities had provided her with health care and welfare assistance; in contrast, the courts had not taken into consideration her vulnerable position when assessing her parental skills and her request to maintain contact with her children. In the case of vulnerable persons, the authorities were required to show particular vigilance and afford increased protection.

Zoletić and others v. Azerbaijan 7 October 2021. The applicants, 33 nationals of Bosnia and Herzegovina, had been recruited from Bosnia and Herzegovina as temporary construction workers in Azerbaijan. They complained in particular of having been subjected to trafficking and forced or compulsory labour in Azerbaijan while working at construction projects.

The Court held that there had been a violation of Article 4 § 2 (prohibition of forced labour) of the Convention under its procedural limb, finding that the Azerbaijan authorities had failed to comply with their procedural obligation to institute and conduct an effective investigation of the applicants' claims concerning the alleged forced labour and human trafficking.

Conclusions. International conventions on the suppression of transnational crimes, in general, and human trafficking, in particular, aspire to strengthen the legal framework for law enforcement at the national level, identifying a number of aspects considered essential for this purpose: jurisdiction, substantive law and international cooperation. The findings in the previous section show that the performance of national jurisdictions in none of these areas is alarmingly poor, urgently requiring a different approach. International law allows states some leeway to determine the scope of their territorial jurisdiction, and states have used this leeway to extend their jurisdiction over acts that are committed abroad but are completed or have effects on their territory.

The Palermo Protocol introduced a clear and detailed definition of trafficking in persons, which was copied by other conventions and which serves as a source of inspiration for states, thus contributing to the harmonization of substantive law. And states are gradually overcoming political and legal obstacles in their quest to intensify international cooperation in criminal matters. However, these positive developments require some reservations. The academic literature focuses heavily on European legal practice, which, being integrated into the institutional structures of the Council of Europe and the European Union is by far the most sophisticated and advanced.

While there are some indications of increasing cooperation between European countries and – for example – African countries (see Operation Koolvis), the performance of non-Western states is largely uncharted territory. Furthermore, the Palermo Protocol and its progeny were primarily concerned with organized crime dealing in trafficking, whereas today, looser networks are on the rise. Because legislation and multilateral assistance treaties may not be adapted to these forms of "unorganized or less organized" crime, perpetrators can easily slip through the cracks of law enforcement. Given these potential shortcomings of national law enforcement, the involvement of international or regional courts and institutions is worth considering.

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REPRESENTATIVE OF THE LEGAL ENTITY REGARDING TO WHICH CRIMINAL PROSECUTION IS INITIATED

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Summary

The subject matter of the representative of the legal entity within the ambit of Criminal Procedural Law engenders considerable debate. In instances where a criminal trial is initiated against a legal person, the necessity arises for said entity to be represented before the criminal investigation body or the judiciary by a designated legal representative. This requirement is delineated in Article 521 of the Code of Criminal Procedure, which establishes the concept, alongside the rights and obligations enshrined in Article 78 of the same code. Theoretically, the framework governing the representative of the legal entity is encapsulated within legislative texts and the specialized doctrinal discourse. However, in practical terms, challenges emerge concerning the mechanism for designating such a representative. These challenges precipitate a degree of ambiguity regarding the eligibility criteria for appointment as the legal representative, the procedural steps for such an appointment, the requisite documentation that must be submitted to the competent authorities by the representative, and the procedural criminal documentation that must be formulated concerning the legal entity with the involvement and presence of the legal representative. Within the context of a criminal investigation that implicates both the legal entity and its designated representative, the legal intricacies become even more pronounced. However, this particular issue is to be thoroughly examined in the forthcoming scientific article, wherein it will be addressed through the proposition of amendments and enhancements to the national legislation. This approach aims to mitigate the identified procedural ambiguities and to refine the legal framework governing the representation of legal entities in criminal proceedings, thereby contributing to a more coherent and systematic procedural structure.

Keywords: legal person, representative, criminal procedure, company, fundamental right, legal framework, subject.

Introduction. If we were to refer to the history of the appearance of the representative of the legal person, it is important to focus on the evolution of the concept of the legal person and its representation in the criminal procedure. The legal person, as an entity that can have separate rights and obligations from those of its members or shareholders, is a notion that dates back to Roman times, but the modern concept has developed significantly since the Industrial Revolution, when economic activities became more complex and felt the need for a legal framework that allows the organization and operation of commercial entities in an efficient manner. Historically, the legal recognition of companies as legal entities separate from their shareholders was strengthened by various legislative acts and court decisions throughout the 18th and 19th centuries. For example, in England, the "Bubble Act" of 1720 was one of the first laws that regulated the establishment of companies and required their official registration.

It is well known that the legal entity cannot act alone; all its rights and interests are executed and ensured by the representative.

Discussions and results obtained. According to the Criminal Procedure Code of the Republic of Moldova, the representation of the legal person in criminal proceedings is regulated by various articles that define the capacity to practice in the criminal process, the consequences

of incapacity and limited capacity to practice, as well as the rights and obligations of the legal representatives of the different participants in the criminal process, including the victim, the injured party, the civil party, the suspect, the accused and the defendant. In addition, the rights and obligations of the legal representative of the victim, the injured party, the civil party, the suspect, the accused, the defendant, as well as the representatives of the victim, the injured party, the civil party and the civilly responsible party are specified. Criminal Procedure Code pays particular attention to the protection of the rights of all parties involved and establishes a detailed framework for representation in criminal proceedings [1].

The national legislation provided in the Code of Criminal Procedure in Art. 521, that "If the criminal investigation or trial of the case against the legal person is carried out for the same act or for related acts and regarding its legal representative, the legal person designates, within 5 days from the date of notification of the ordinance of recognition of the person as a suspect or within 48 hours from the moment of notification of the indictment ordinance, another representative in respect of whom no criminal trial is being conducted. If the legal entity has not appointed a representative, at the request of the prosecutor, the investigating judge or, as the case may be, the court appoints a representative of the legal entity from among the persons who administrate the legal entity, in respect of whom no criminal trial is being conducted".

What happens if the legal entity, for various objective or subjective reasons, has not appointed another representative? In this case, the criminal procedural law specifically indicates how to proceed. Thus, according to Art.521 paragraph (2^1) of the Criminal Procedure Code, "If the legal entity has not designated a representative according to paragraph (2), at the request of the prosecutor, the investigating judge or, as the case may be, the court appoints a representative of the legal entity from among the persons who administrate the legal entity, in respect of whom no criminal trial is being conducted".

In other words, the law requires that in the case of the legal entity, the latter must be mandatory represented. In the case of the norm in question, the investigating judge appoints the person who will represent the legal entity, namely that person must be from within the legal entity, having the right to administrate this entity. Therefore, as a representative of the legal person can be appointed the following: one of the associate administrators or the director (in collective companies), one of the limited partners or the director (in limited partnerships), one of the members of the company board or the director or administrator (in the case of limited liability companies). These persons are designated depending on the prosecuted, in the case in which the legal entity is concerned [2].

There may be situations where the legal entity has not appointed its representative and the investigating judge could not appoint another representative, for example, because he had no person to appoint. In similar situations, the procedure will be according to Art.521 para. (2^2) of Criminal Procedure Code, which stipulates: "In the absence of persons managing the legal entity, the prosecutor or the court requests the coordinator of the territorial office of the National Council for State-Guaranteed Legal Assistance to appoint a lawyer to provide state-guaranteed legal assistance. In this case, the provisions of paragraph (3) shall be applied accordingly if there are no situations justifying the replacement of the lawyer".

The procedural-criminal legislation, through these legal provisions, guarantees the legal person the right to defense. The basic task of the legal representative or the appointed one is to represent the legal person and exercise, through him, all the rights of the legal person. Strictly speaking, the representative of the legal entity benefits from all the rights provided for in Art.78 of the Code of Criminal Procedure being a representative of the accused. Thus, the national legislation did not expressly provide in Criminal Procedure Code a separate article for the representative of the legal entity, with the mention of his rights and obligations.

In the criminal process, the legal or designated representative of a legal entity is empow-

ered to represent it in all procedural actions, including those in which the legal entity is a party (according to Article 521 paragraph (3) of the Criminal Procedure Code). It is important to note that the representative of the legal entity does not act as a lawyer in the criminal process, but only fulfills the specific duties of representing this legal entity. It is also worth noting that the legal entity has the possibility to appoint a lawyer to protect its interests. In the absence of legal restrictions, the lawyer of the legal entity may also provide legal assistance to the employees of the legal entity in question.

In the Decision of the Constitutional Court regarding the exception of unconstitutionality of some provisions of Article 521 paragraph (2) from the Criminal Procedure Code (Complaint No. 132g/2018) (November 22, 2018) the issue of the omission to regulate the right of the legal entity to designate its representative to represent it during the criminal investigation phase was discussed. The Court examined the issue from the perspective of the right to defense, noting that it is important that, from the initial stages of the proceedings, the legal person accused of committing criminal acts can call on the legal assistance of his choice. The Court emphasized that the fairness of the proceedings demands that the accused legal person should be able to have access to the entire spectrum of services assimilated to legal assistance. Beyond the importance of the relationship of trust that must exist between the defending representative and the legal person, this right is not an absolute one. The Court had to check whether the interests of justice demand, in the context of criminal cases against legal entities, the appointment of another representative of the accused legal entity by the criminal investigation body when the criminal investigation was also started against the initial representative [3].

The Court used the reasoning of the minimum interference, considering that granting the possibility for legal entities to appoint their representatives in criminal proceedings, when the criminal prosecution has been started regarding their legal representatives, does not affect the interests of justice at all. However, there are situations in which the interests of justice may claim the appointment by the authorities of a representative of the legal person in criminal proceedings. It is the case that legal entities refuse to appoint a representative or simply cannot appoint any one. This measure would be taken in the interest of the accused legal persons and would be designed for the adequate defense of their interests related to criminal proceedings. The optimization of the two competing principles – the right to defense and the achievement of the interests of justice – demands that, when a legal person is accused, it can appoint its legal representative for criminal proceedings. In the situation where the legal representative is also accused in the same proceedings, the legal person must be able to designate another representative. In the event that the legal person does not appoint another representative, either the investigating judge at the criminal prosecution phase or the court at the trial of the case must take over this task, at the request of the prosecutor [4].

According to Art.521 paragraph (4) of the Criminal Procedure Code, "against the legal representative or, as the case may be, the appointed representative of the legal person regarding whom the criminal investigation is carried out, only coercive measures applicable to the witness may be taken in this capacity". In other words, with regard to this representative, only the obligation to appear before the criminal investigation body and the forced bringing may be applied. Other coercive measures against this representative are prohibited.

Within the context of the above, we consider it appropriate to propose a *ferenda law*, that the Criminal Procedure Code should be supplemented with the following article 77^1. The representative of the legal entity, which would have the following content: "paragraph (1) A representative of a legal person is a natural person authorized to act on behalf and in the interest of that legal person against whom criminal proceedings have been initiated. The representative of the legal entity is one of the associate administrators or the director (in collective companies), one of the limited partners or the director (in limited partnerships), one of the members of the

company board or the director or administrator (in the case of limited liability companies). (2) These persons are designated depending on the prosecuted in the case in which the legal entity is concerned. (2[1]) An external legal advisor can also be a representative of the legal entity. (3) In case the legal person commits an offense provided for in chapter X of the Criminal Code, "Economic Crimes", the representative can be any natural person who holds a license in the field of economic studies, or a representative of the Ministry of Finance" [5].

And last but not least, it is necessary to complete the Code of Criminal Procedure in Art. 78 with "paragraph (6)[1] – The representative of the legal entity has the same rights and obligations stipulated in paragraph (1) and (6) respectively of the same article".

Having analyzed the legal provisions related to the appointment of the representative of the legal person, everything seems to be clear, but in the activity of criminal investigation it is different, referring to the applicability in practice, the criminal investigation body represented by prosecutors or criminal investigation officers is faced with the problem of the lack of a representative of the legal person, taking into account that in Art. 521, the phrase "representative of the legal entity from among the persons who administrate the legal entity" is stipulated, but there are Limited Liability Companies in which a single natural person has the capacity of founder, director and administrator of the legal entity, and in the event that the criminal investigation is initiated both in respect of the legal entity and of the one who administers it, the criminal investigation body or the court will be unable to identify a specific representative from among the persons who manage this legal entity.

In the context of a criminal prosecution targeting both the legal entity and its representative, the situation becomes complicated from a legal point of view, because the legal representative would normally act on behalf and in the interest of the legal entity to defend its rights and interests in the criminal process. When the representative is also the subject of criminal prosecution, his interests may conflict with those of the entity he represents. Legislation in force in many jurisdictions provides frameworks for legal entities to be represented in criminal proceedings by legal representatives, but does not always clarify the procedures to be followed when the representatives are also prosecuted. In such cases, the conflict of interest is obvious and requires a solution that ensures the rights of the legal person to be effectively represented without compromising the integrity of the criminal process.

In order to avoid these ambiguities, we consider it opportune to propose a legislative amendment that could supplement the Code of Criminal Procedure with the following article: "Art. 521[1] Appointment of another representative", which would have the following content: "If the legal representative of the legal entity is prosecuted, the legal entity must have the right to appoint another representative to ensure the defense of its interests in the criminal process. This representative may be another member of leadership not involved in the prosecution or external legal counsel".

Clear appointment procedure: Legislation must provide for a clear and speedy procedure for appointing this representative, including deadlines and conditions to be met to ensure that the criminal process is not unnecessarily delayed. Conditions of eligibility: Specific eligibility criteria must be established to ensure that the newly appointed representative is able to effectively represent the legal entity and is not himself the subject of criminal investigations or conflicts of interest. Protection of the rights of the legal entity: Legislative changes must focus on protecting the rights and interests of the legal entity in the criminal process, ensuring that it has access to a fair trial and adequate representation.

This legislative amendment proposal seeks to clarify procedures and protect the rights of legal entities in complex situations, while ensuring the integrity of the criminal process. It is crucial for legislation to be flexible and provide adequate mechanisms for conflict management.

Likewise, a problem that the criminal prosecution body could face is the situation in which

the person with responsibility within the company (the administrator/director) is also criminally investigated as the legal entity itself, and another representative from among the people managing the legal entity has been established, but cannot be empowered by procuration by the administrator/director of the company due to the fact that the latter is under investigation in a state of arrest. Thus, it should be noted that in the case of the application of the provisions of Art. 521 paragraphs (2) and (2^1) of the Criminal Procedure Code, and in the case of establishing another representative of the legal person, it is necessary for the criminal investigation body to request the power of attorney authorizing one or another person in order to avoid interpretations of violation of the fundamental rights of the person and to avoid the problem in the case of the existence of several potential representatives, why a particular person was selected.

Conclusions. In conclusion, national legislation provides clear directives regarding the appointment of a legal person's representative in cases where it is involved in a criminal trial. However, complex situations arise where the legal representative of a legal entity is also the subject of criminal prosecution, which can affect the efficient defense of the entity's interests. The proposed legislative amendment aims to clarify the procedures and protect the rights of the legal entity in such scenarios, ensuring that it has access to adequate representation and that the integrity of the criminal process is maintained. It is essential that the legislation is adaptable and provides effective mechanisms for handling conflicts and specific situations, to avoid misinterpretations and to protect the fundamental rights of the legal person in the criminal process. This article came as a clarification of some situations arising in the activity of the criminal prosecution body, which not least takes into account the theoretical part, without which it would not be possible to apply the legal provisions in practice.

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THE CRIMINAL RESPONSIBILITY OF MINORS AND THE CRITERIA FOR DETERMINING IT

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Summary

Criminal liability implies a certain maturity of the subject of the crime in the sense of his awareness of the socially dangerous character of his acts, as well as the existence of the ability to manifest his will and properly direct his actions. Naturally, acquiring responsibility or reaching a certain degree of intellectual and mental maturity occurs at a certain age. Along with the age of criminal liability, responsibility is a mandatory sign of the subject of the crime that must be established each time and cannot be presumed in the case of minors. However, minors, although they have reached the age of criminal responsibility, do not always act with discernment.

This scientific research is dedicated specifically to highlighting the specific features of the criminal responsibility of minors, invoking legal notions and those from the specialized literature. At the same time, the author explains the essence of the intellectual and volitional factor of responsibility, based on legal provisions and doctrinal interpretations. Also, a segment subject to investigation targets the periods (stages) of criminal responsibility, each with its own peculiarities.

Keywords: minor, crime, responsibility, irresponsibility, criminal liability, psychic capacity, discernment, intellective factor, volitional factor.

Introduction. The issue of minors in conflict with the criminal law remains a subject that is continuously targeted by states that pursue the vector of establishing and consolidating child-friendly justice. Of course, minors, being only at the initial stages of their development, must benefit from criminal treatment adapted to their personality and needs, one distinct from that of adults. This desideratum is also enshrined in numerous international documents, so that many states have committed themselves to guarantee that in any action targeting minors, their best interests will prevail.

Being characterized by reduced psychosocial development, cognitive and emotional immaturity, minors possess a certain level of understanding and awareness of social values and relationships and, respectively, manifest specific attitudes and behaviors. All this leads to special criminal justice for minors. Thus, among the peculiarities characterizing the criminal treatment of children is highlighted the problem of establishing their responsibility and identifying the criteria for determining it.

Methods and materials applied. In order to elaborate this scientific approach, the author capitalizes on a specific methodology, using as materials the national legislative framework and international standards, as well as the interpretations of doctrinaires in the country and foreign ones. Among the methods used we list analysis, logical and systemic interpretation, comparative method etc.

Discussions and results obtained. As is highlighted in the specialized literature, the quality of active subject of the crime implies the bio-psychic ability of the person to understand and assume the obligations of behavior provided by the norms of criminal law, as well as the ability to

consciously master and direct his acts of conduct in relation to these requirements. Man does not acquire these traits from the moment of birth, but gradually, in the process of bio-psychic growth and development. It is precisely in this sense that the question arises of knowing, from which stage of his development, the person can be considered as having the qualities necessary to be an active subject of crime [1, p.152]. So, identifying signs of the minor subject of the crime involves some specific features.

There are numerous international documents dedicated to the criminal liability of minors, which provide a series of guarantees and special rules regarding minors, taking into account the particularities regarding the stages of development of the human being. However, each time when the minor is brought to criminal responsibility, his level of development must be taken into account, as well as the ability to properly understand social values and relationships, as well as the ability to discern his actions. Therefore, as is proclaimed in Article 4 of *The United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules),* in legal systems which recognise the notion of the limit of criminal liability, the latter must not be fixed too low taking into account aspects of emotional, psychological and intellectual maturity [2]. Also, in the same document it is shown that the limit of criminal liability varies quite a lot according to eras and cultures. The modern attitude consists in the question of whether a child can bear the moral and psychological consequences of criminal responsibility, that is, whether a child, taking into account his capacity for discernment and understanding, can be held responsible for an essential antisocial behavior [2].

International standards in the field of child protection stipulate that responsibility issues, that is, the ability to discern on their own facts, being closely related to the age of the minor, determine a milder legal-criminal regime for this category of subjects. Therefore, as recalled in the preamble to the *1989 Convention on the Rights of the Child*, the child, due to his lack of physical and intellectual maturity, needs special protection and special care, mainly adequate legal protection, before and after birth [3]. The Convention also proclaims, *inter alia*, that States Parties shall endeavour to promote the adoption of laws, procedures, the establishment of authorities and institutions specifically designed for children suspected, accused or claimed to have committed violations of criminal law, and in particular shall establish a minimum age below which children shall be presumed not to have the capacity to violate criminal law [3].

At international level it is also recognized that young people, being only at the initial stages of their personality development, need, in order to develop mentally and intellectually and to integrate better into society, special attention and assistance and must be protected by law according to the conditions that guarantee their tranquility, their freedom, their dignity and their safety [2]. So, these standards highlight as a personality trait of the minor the lack of mental, intellectual and emotional maturity.

Referring to the criminal liability of the minor, we mention that in order to be able to impute to the person the responsibility for committing a crime, it is necessary to determine whether he at the time of committing the act had the ability to fully understand the socially dangerous character of his acts, as well as the ability to manifest his will and direct his actions, that is, it must be established, in each case, that the person at the time of committing the act was in a state of responsibility.

The determination of responsibility has specific particularities in the case of minors. Or, upon reaching a certain age, man can be regarded as having responsibility. According to the national legislator, 16 it the age at which the person can be considered fully responsible for committing criminal acts. At the same time, from the age of 14, the minor can be criminally liable only for some crimes that the legislator considered to be obviously prejudicial and socially dangerous, so that the obligation to refrain from committing them can be realized even from the age of 14. So, age and responsibility are the two mandatory attributes of the person as a subject of crime.

Invoking the provisions of article 21 of the Criminal Code of the Republic of Moldova, we mention that are liable to criminal liability the responsible individuals who, at the time of committing the crime, have reached the age of 16 [4]. At the same time, the legislator provides in para. (2) of the same article, an exhaustive list of crimes, criminal liability for which occurs from the age of 14. Therefore, not every person can be subject to crime, but only those who meet the signs expressly provided by law, that is, age and responsibility. We remind that in some cases (for some components of crime), in addition to these general signs, the law prescribes the existence of special signs of the person who committed the crime. Based on these provisions, we reiterate that in any case, if the person is under the required age at the time of committing the crime, he cannot be subject to the crime, and criminal incapacity or the legal presumption of criminal irresponsibility are not capable of being proven otherwise, they are absolute.

Further we explain the essence of criminal responsibility through the prism of legal and doctrinal notions. The legal notion of responsibility can be found in Article 22 of the Criminal Code of the Republic of Moldova, according to which *responsibility* is the psychological state of the person who has the ability to understand the prejudicial character of the act, as well as the ability to manifest his will and direct his actions [4]. At the same time, the legislator considered it necessary and defined in the next rule the notion of *irresponsibility*, stipulating that it is not liable to criminal liability the person who, during the commission of a harmful act, was in a state of irresponsibility, i.e. could not realize his actions or inactions or could not direct them due to a chronic mental illness, a temporary mental disorder or other pathological state. Against such a person, based on the decision of the court, can be applied medical coercion measures, provided by the Code [4]. In addition, para.(2) of the Art. 23 of the Criminal Code of the Republic of Moldova it is highlighted that a person who, although he committed the crime in a state of responsibility, but before the court pronounces the sentence, fell ill with a mental illness that deprived him of the possibility to realize his actions or inactions or to direct them, is not punishable. Against such a person, based on the decision of the court, may be applied medical coercive measures, and after recovery – he may be subjected to punishment [4].

We will invoke below some of the definitions existing in the specialized literature. Defining the notion of *responsibility,* Dongoroz V. rightly mentions that it represents the psycho-physical state of the individual or person who has the aptitude or ability to discern or understand the nature and character of his actions, to understand the value and essence of their consequences, as well as the possibility and ability to naturally and normally determine his will in relation to his own actions. The state of responsibility or the so-called psychic capacity of the person, the author also emphasizes, therefore implies that the person possesses psychic attributes (intelligence, reason) that make him capable of perceiving the prejudicial and socially dangerous character of the actions or inactions that he commits but also from which he is able to refrain from committing prohibited actions or to carry out actions obliged or ordered by law [5, p.393].

The doctrine also states that, being a legal term*, responsibility* defines the ability of a person to control and appreciate both his actions and their social consequences, to fully assume the obligations arising from a freely consented action, which he deliberates and undertakes, to understand the consequences of his actions in the interest of his own person, but without prejudice to the interest of the community, to accept and bear the consequences of its actions contrary to the norms of social coexistence [6, p.138].

In the view of other authors, [7, p.123-124] *responsibility*, as a sign of the subject of the crime, is the mental state of the person who, taking into account the level of development, socialization, age and state of mental health at the time of committing the crime, consists in his ability to realize his actions and to direct them, and in this connection, to be subject to criminal liability and punishment. Thus, not only a mentally healthy person can be held responsible, but also an individual suffering from certain mental disorders, but who, nevertheless, enabled him at the time of

committing the crime, to realize the character of his actions and to direct them. In this case, these are mental disorders, which do not remove the person's ability to be aware of the nature of his actions and to master them.

We agree with the view that *mental responsibility* is a condition for the existence of criminal liability and equally a condition of guilt. Responsibility is an independent category in criminal law, and is not a reflection of irresponsibility, it has its concrete signs and serves as a requirement for the occurrence of criminal liability of the active subject for committing the crime. Where there is no mental responsibility, there is no guilt, and where there is no guilt, there is no crime. As a result, where there is no crime, there is no criminal liability [8, p. 33]. The same relation between *responsibility – guilt – criminal liability* is also identified by the authors Botnaru S., Şavga A. et al. in whose opinion responsibility is the necessary premise for constituting the subject of the crime – the individual – as well as for establishing his guilt, criminal liability and punishment [9, p.181].

By invoking these definitions, we conclude that establishing the responsibility of the person always involves identifying his capacity to understand the character of the actions/ inactions committed as well as the ability to freely manifest his will and direct his actions.

The doctrine highlights several stages regarding the criminal responsibility of minors. As it is shown in the literature, from the point of view of criminal imputability, there are two distinct periods:

1. Period of non-criminal imputability – the so-called period of absolute criminal iresponsibility, absolute criminal incapacity.

2. The period of criminal imputability, which in turn may be:

a) period of relative imputability (period of dubious responsibility, problematic responsibility);

b) reduced imputability period (reduced liability period);

c) period of full imputability (period of absolute responsibility) [10, p.84].

The first period – the period of criminal non-imputability *(criminal irresponsibility, absolute criminal irresponsibility, absolute criminal incapacity, the period of criminal non-imputability)* is aimed at the age of up to 14 years. Referring to this period, the Romanian authors argue that the theoretical criterion consists in the recommendation to keep out of the scope of the criminal law the minors, who, due to their age, generally do not have the possibility to understand the basis and purpose of the legal-criminal coercion [11, p.218]. At the same time, according to the authors Dongoroz V., Kahane S., Oancea I. and others, at establishing the lower limit from which begins the criminal liability for minors (i.e. the upper limit of the period of full iresponsibility, which coincides with the lower limit of dubious responsibility, in certain provided cases, as well as the upper limit of dubious responsibility, which coincides with the lower limit of full responsibility) it is noted the tendency to raise the level of this limit, so that as many minor perpetrators as possible are excluded from the regime of criminal coercion [11, p.218]. This tendency, as is argued in the doctrine, presents a serious contradiction, due to the fact that, on the one hand, there is an obvious precocity in the world of minors, due to the technical means of information and culturalization, and, on the other hand, the criminal law extends the stage of childhood until the immediate vicinity of the limit from which adulthood begins. This contradiction is apparent, because in the end, precocious, but lost minors need an adequate social-moral education, along with general education [10, p.85]. We support this view, because the aim of criminal policy must not be oriented towards the application of punishment or to bring to justice a wider circle of people, but criminal policy, especially regarding to minors, must be focused on measures of prevention, correction and education.

Referring to the second period – *the period of criminal imputability*, we will highlight several important ideas. So, we have previously explained that minors under the age of 14 are not criminally liable, being considered as having no criminal responsibility. Minors who have reached

the age of 16 are criminally liable for all crimes, benefiting from a milder criminal treatment compared to adults. Regarding minors between the ages of 14-16, we mention that they can be criminally liable only for the acts expressly invoked in Art. 21 para.(2) of Criminal Code of the Republic of Moldova. According to the text of the law, individuals aged between 14 and 16 years are liable to criminal liability only for committing the crimes provided for in Art. 145, 147, 151, 152 para. (2), Art. 164, 166 para. (2) and (3), Art. 171, 172, 175, 186-188, 189 para. (2)–(6), Art. 190 para. (2)–(5), Art. 192 para. (2)–(4), Art. 192^1 para. (2) and (3), Art. 196 para. (4), Art.197 para. (2), Art. 212 para. (3), Art. 217 para. (4) lit. b), Art. 217^1 para. (3) and para. (4) letter b) and d), Art. 217^3 para. (3) letter a) and b), Art. 217^4, Art. 217^6 para. (2), Art. 260, 268, 270, 271, 275, 280, 281, 283-286, 287 para. (2) and (3), Art. 288 para. (2), Art. 290 para. (2), Art. 292 para. (2), Art.317 para. (2), Art. 342 [4]. We draw attention here to the fact that the national criminal law provides for a presumed discernment of minors aged 14-16, while the criminal law of Romania expressly provides that a minor who is between 14 and 16 years of age is criminally liable only if it is proved that he committed the act with discernment [12]. Discernment should not be equated with responsibility. According to the Romanian author Bulai C., discernment presupposes the minor's ability to realize the socially dangerous character of the act and to consciously manifest his will, a capacity regarded, however, not in general, but in relation to the committed act [1, p.154]. In the view of other authors, the notion of *discernment* receives an evolutionary connotation related not only to the degree of psychic and somatic maturity, but also to the social experience of the perpetrator [10, p.87].

We fully support the idea of unpresumed discernment of minors who have committed crimes and are between 14 and 16 years old. As Păvăleanu V. mentions, *discernment and lack of discernment should not be confused with responsibility and irresponsibility* [13, p.127].

Article 21 para.(2) of Criminal Code of the Republic of Moldova stipulates the age of criminal responsibility, without the need to identify the real discernment of the person. However, as we can see, the requirement to establish the minor's discernment results from the provisions of Art.475 of the Criminal Procedure Code of the Republic of Moldova which stipulates the circumstances to be established in cases concerning minors. According to the text of the law, during the criminal investigation and trial of criminal cases concerning minors, apart from the circumstances provided for in article 96, shall be established:

1) age of the minor (day, month, year of birth);

2) the conditions in which the minor lives and is educated, the degree of intellectual, volitional and psychological development of the minor, the peculiarities of his character and temperament, his interests and needs;

3) the influence of adults or other minors on the minor;

4) causes and conditions that contributed to the commission of the crime [14].

At the same time, if it is found that the minor suffers from mental debility, which is not related to a mental illness, it must also be established whether he was fully aware of the act. In order to establish these circumstances, the minor's parents, teachers, educators and other persons who could communicate the necessary data will be heard, as well as a social investigation, the presentation of the necessary documents and other criminal and judicial prosecution acts will be carried out [14]. An important role in establishing these circumstances is played by the before the sentence report.

The requirement to establish the responsibility of the minor also arises from the provisions of the *Decision of the Plenary Session of the Supreme Court of Justice on judicial practice in criminal cases regarding minors*. According to paragraph (12) of this decision, taking into account the provisions of Art.21 para. (1) and para. (2) of the Criminal Code, the Court, based on substantive and procedural law, decides whether a minor with mental retardation who is not related to mental disorders and which limits his ability to fully realize the character and social danger of his actions

(inactions), to direct them or to be aware of the consequences of those actions (inactions) can be held criminally liable [15]. At the same time, if the minor is of age stipulated by law, but there are doubts about his capacity to be criminally liable, i.e. the biological and psychological development of the minor does not correspond to his biological age or, possibly, his behavior apparently attests to mental retardation, or certain pathological states, or behavioral disorders, the court, at the request of the parties, based on Articles 143, 144, 475 para.(2) of the Criminal Procedure Code, is entitled to order a complex psychological, psychiatric or psychological-psychiatric expertise to clarify the issue regarding his mental state and ability to correctly understand the circumstances that are important for the criminal case. At the same time, experts will be asked about the influence of the minor's mental state on his intellectual development, taking into account his age [15].

Analyzing the legal provisions, as well as the doctrinal interpretations, we can easily find that responsibility implies the cumulative existence of the person's capacity to understand the prejudicial character of the act and the ability to manifest his will and direct his actions. However, at establishing responsibility, two criteria (factors) will be invoked: intellective and volitional. We mention from the beginning that these two factors must exist cumulatively, the absence of one of them implying the lack of responsibility.

As is also shown in the doctrine, responsibility necessarily involves the coexistence of two factors: an *intellective* one, consisting in the person's ability to realize his actions or inactions, their social significance and their consequences, the other *volitional*, consisting in the ability of the same person to be master of his actions, in the sense of could consciously direct them [16, p.42]. Thus, Botnaru S. argues, *responsibility* means the psychophysical state of the person who is able to realize the natural value of his actions or inactions and their consequences and can consciously direct his will in relation to these facts. A person is considered responsible if he enjoys that psychophysical normality that is necessary and sufficient for the existence of the ability to understand and direct his will. Normality being the rule, a person is implicitly presumed responsible as long as there are no circumstances, facts, attitudes, etc. capable of creating doubt about his capacity, in terms of any of the above-mentioned factors (intellective and volitional). A responsible person, through his psychic qualities, is able to represent the prejudicial character of the committed act and, at the same time, is able to refrain from committing acts prohibited by criminal law [16, p.42].

The importance of determining the intellectual or volitional criterion of responsibility, as well as the medical one, is also highlighted in the *Decision of the Plenary Session of the Supreme Court of Justice on judicial practice in criminal cases regarding minors*, so that the courts will take into account that the medical criterion of irresponsibility (finding a chronic mental illness, temporary mental disorder or other pathological condition), it is not enough to recognize the minor being irresponsible (Art. 23 para.(1) Criminal Code). This is because the presence of a mental illness or disorder in a minor does not testify to his irresponsibility. For example, if the minor is diagnosed with a chronic mental illness or with a temporary mental disorder, or with another pathological condition, but which does not affect the normal activity of the minor's psyche, there is no reason to recognize him irresponsible. Thus, only the cumulative presence of the medical and legal criteria (lack of intellectual capacity, i.e. inability of the minor to realize his actions or inactions; lack of volitional capacity, i.e. inability of the minor to direct his actions or inactions at the time of committing the crime) will result in the impossibility of bringing the minor to criminal responsibility. If the court found only the presence of the medical criterion, the minor may be liable to reduced criminal responsibility, so he will benefit from the individualization of the punishment in the sense of mitigation (Art. 76 para. (1) letter d) of the Criminal Code) and, depending on the existing mental disorder towards the minor may be applied medical coercion measures (Art. 23^1 para.(2), Art.99 of the Criminal Code, Art.488 para.(1) of the Criminal Procedure Code) [15].

Conclusions. The establishment of responsibility criteria is an extremely important issue for the individualization of criminal responsibility and punishment in the case of minors. As we

have seen, minors are a category of subjects characterized by social, cognitive and psychological immaturity. For these reasons, they do not always have that psychological state that allows them to be adequately aware of social values and relationships. Therefore, criminal liability towards minors implies, of course, in addition to determining their age, determining their responsibility and discernment in relation to the committed criminal act.

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THE PARTICULARITIES OF INTERNATIONAL CRIMINAL RESPONSIBILITY FOR WAR CRIMES

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Summary

International criminal responsibility for war crimes, like criminal responsibility in general, provides for the possibility of the most serious consequences for a person who violated the law, is characterized by the exclusivity of substantive and procedural grounds. The relations associated with its specification and implementation being subject to the most detailed regulation.

At the same time, the features of war crimes predetermine the specifics of the norms that provide the basis and procedure for triggering the type of criminal liability under consideration, as well as the very mechanism for specifying and implementing it.

Keywords: international criminal liability, war crime, mercenary activity, international law, international security, legal regulation, armed conflict.

Introduction. In the context of this essay it is necessary to mention that, first, under modern international law, criminal acts in the field of war crimes (the exhaustive list of which is not normatively defined) can be committed during an armed conflict of both an international and an internal nature and, second, in modern international law doctrine, international legal documents and law enforcement practice, a number of the most serious violations of the laws and customs of war are considered crimes against the peace and security of mankind. Thirdly, these crimes may be committed as part of a plan, a policy, bearing a multidimensional character or being the result of the excesses and criminal activities of individual persons [23].

The problem of war crimes and the dynamics of the risks generated by their commission in the current geopolitical context was analyzed by applying classical scientific research methods, such as:

The issue of war crimes and the dynamics of the risks generated by their commission in the current geopolitical context has been analysed by applying classical scientific research methods such as:

– *the comparative method* (applied for the purpose of the research, comparing different methods of committing this type of crime depending on the context);

– *the systemic method* (used to carry out a systemic analysis of the normative stipulations, developed to regulate the mechanism of action and prevention of these crimes);

– *the historical method* (which was used to study the specific stages and elements of the development and evolution of the issue in armed conflicts during the development of regional and international inter-state relations),

– *the logical method* (used for the critical study of normative regulations, with a view to highlighting the main directions, guidelines and legal approaches in the legal qualification of war crimes);

– *the synthetic analysis method* (useful for drawing the necessary conclusions).

Discussions and results obtained. The specificity of the legal basis of criminal responsibility for war crimes is determined primarily by the intersection of the fields of international law and domestic law in preventing and repressing such crimes and punishing those guilty of committing them.

Secondly, it is further determined by the peculiarities of the international law system, the dynamics of the formation of its individual institutions. Since, as already mentioned, war crimes (violations of the laws and customs of war) are classified as international crimes within the doctrine of international law, the international legal regulation of the formation and implementation of criminal liability for them is of particular importance, given that they infringe on certain security values at the international level.

In this vein we return to one of the issues related to war crimes studied by us earlier, namely the activity of mercenaries.

Thus, according to the UN International Convention against the Recruitment, Use, Financing and Training of Mercenaries No. 44/34 of 04.12.1989, mercenary actions are aimed at:

– overthrowing the legally established government;

– undermining the constitutional order;

– underminig the territorial integrity of the state [16].

The UN General Assembly Declaration of 24.10.1970 on Principles of International Law concerning Friendly Relations and Co-operation among States [12], categorically forbids UN member states to support the actions of mercenaries: "Every state has the duty to refrain from organizing or encouraging the organization of irregular forces or armed bands, including mercenaries, for incursion into the territory of another state".

In the doctrine of international law, mercenaries are recognised as criminals and are liable before the courts under the law, i.e. they are international criminals [19].

This leads to the conclusion that the presence of a national law criminalising a particular international crime and establishing the procedure for bringing it to justice is, in principle, not mandatory. Also, the idea expressed by Professor I. Artyibasov decades ago has not lost its relevance: "The punishment of war criminals is not a domestic but an international issue, since war criminals commit crimes against peace, war crimes and crimes against humanity, for which liability is provided for in Article 6 of the Charter of the International Military Tribunal. No state can change (or, indeed, to exclude) an international legal norm by a national act" [4, p.230].

The UN General Assembly has adopted several resolutions directly or indirectly related to the issue of mercenarism. The initiators of the resolutions harshly condemning mercenaries were African countries suffering from the participation of white mercenaries in post-colonial wars [17].

It is worth recalling that General Assembly resolutions, while important indicators of the mood of the world community, are not binding on UN member states - except, perhaps, in cases where such a resolution is a declaration of an already existing principle of customary international law.

Thus, Resolution 2131(XX) of 1965, which is called the "Declaration on the Inadmissibility of Interference in the Internal Affairs of States, on the Protection of their Independence and Sovereignty", is considered to have the force of customary law. In particular, this resolution declares the following:

"All States must also refrain from organizing, assisting, creating, financing, encouraging or permitting armed, subversive or terrorist activities aimed at changing the order of another State through violence, as well as from intervening in the internal strife of another State" [13].

On the other hand, the importance of the rules of national (domestic) law establishing the grounds, forms and scope of criminal liability for war crimes, as well as the regulation of the procedural regime for its specification and implementation in the criminal field by national justice bodies, should not be diminished. As practice shows, "most war crimes cases are considered by national

courts, which, when dispensing justice, are guided primarily by the domestic criminal law and penal-procedural laws of the State. National law ensures the implementation of the principles and rules of international law (including in the field under study) on the territory of the state" [19].

National law, in turn, can be used by international criminal justice bodies. Here we support Professor Yu. Reshetov's assertions, who insists that "national legislation can also be a legal source of liability of persons for international crimes, if it is in accordance with national law" [10, p.171].

"The ambiguous understanding of the legal basis of criminal responsibility for war crimes in international law science is largely due to the fact that the definition of unacceptable means and methods of conducting armed combat, as well as the interests of protecting human rights during armed conflict, are established by the rules of the branch of international law governing the conduct of armed conflict and denoted by terms such as international humanitarian law, law of armed conflict, laws and customs of war, etc." [5, p.15].

The components of war crimes are set out in the 1949 Geneva Conventions for the Protection of War Victims (Article 50 of the First Convention, Article 51 of the Second Convention, Article 130 of the Third Convention, Article 147 of the Fourth Convention) [15] and the 1977 Additional Protocols to these Conventions (Article 35(2), (3), Article 85(4)(b), (e) of Protocol I) [12].

In this regard, there is a widespread view in the international law literature that "it is precisely international humanitarian law (law of armed conflict) that provides for criminal responsibility for the commission of war crimes" [6, p.63].

According to Professors A. Berko and A. Kibalnik, "the unequivocal recognition that criminal responsibility for war crimes is also established in international humanitarian law confuses the subjects and tasks of two emerging branches of international law - international humanitarian law and international criminal law" [7, p.14].

The most important sources of international humanitarian law (law of armed conflict), as already mentioned, establish a number of restrictions and prohibitions for belligerents and contain a list of violations, some of which refer to war crimes. It is fair to "consider that international humanitarian law applied in armed conflicts establishes certain legally protected interests, the violation of which is prohibited. The provisions of international humanitarian law are a starting point for the recognition of a particular attack as criminal" [2, p.32]. At the same time, the issues of criminal responsibility for war crimes (at least, the mechanism and procedures of its specification and implementation, sanctions for criminal violation of means and methods of warfare, grounds for exemption from criminal responsibility) by their nature go beyond the framework of those relations that are regulated by international humanitarian law applied in armed conflicts and therefore require special legal regulation [7, p.23].

Since war crimes violate interests protected by international humanitarian law, addressing the issue of international criminal law, which establishes the grounds, conditions and limits of criminal responsibility for the commission of these crimes, seems quite logical. Apparently, scholars are right to distinguish between the subjects of international humanitarian law and international criminal law, pointing out that international humanitarian law prohibits a number of methods and means of waging war or armed conflict, while international criminal law determines their criminal degree and criminal liability for their application.

On the other hand, it cannot be denied that the issue of international criminal law remains controversial. A generalisation of the research carried out in this area allows us to identify the following approaches to understanding international criminal law.

International criminal law is part of national criminal law. This point of view was supported, in particular, by the French lawyer Donnedieu de Vabre, who understood international criminal law as a set of domestic criminal laws, the effects of which extend outside the territory of the state [1, p.3]. In modern conditions, given the role of international legal regulation in this field, the inconsistency of such a concept is obvious.

International criminal law is an independent branch of law. Thus, Professor P. Romashkin stated that international criminal law is an independent branch of law "which includes rules defining and regulating responsibility for international crimes and conditions for mutual legal assistance of states in the fight against international crimes provided for by international treaties [20, p.25]". However, it follows from this definition that international criminal law regulates relations between states, which predetermines its place in the system of international law.

Thus, in general, we can speak of a combined approach in the choice of appropriate criminal jurisdiction in relation to war crimes, where the national form, as a rule, is considered to have priority.

In characterizing the relationships associated with the formation and implementation of criminal responsibility for war crimes within international or national jurisdiction, attention must be paid to the presence and combination of international and national legal elements therein. Thus, a national court, when examining a war crime case, will be guided by the rules of criminal law and criminal procedure of its state, but at the same time will refer to the provisions of those international treaties to which that state is a party, which contain a description of the war crime. On the other hand, it cannot be excluded that international criminal justice bodies may have recourse to national law and national law enforcement practice. For example, the International Criminal Court, as follows from Article 21(1) of the Rome Statute, applies, firstly, the Statute itself, but also the provisions adopted for the development of its rules such as "Elements of Crimes, its Rules of Procedure and Evidence" and, secondly, "applicable international treaties, principles and rules of international law, including the generally recognised principles of the international law of armed conflict.

If this is not possible, the Court will apply the general principles of law drawn by it from the national laws of the legal systems of the world, including, where appropriate, the national laws of States which, in ordinary circumstances, would exercise jurisdiction over the offence in question, provided that these principles are not incompatible with the Statute of the Court, international law and internationally recognized norms and standards" [14].

The development of relations related to the assessment of a war crime and the person who committed it, the adoption of measures to ensure the inevitability of criminal responsibility in criminal proceedings, requires cooperation between states in matters of extradition of the accused (suspect), legal assistance, enforcement of punishment [8, p.48-66].

Broadly speaking, the scheme of formation of the conditions in the presence of which international criminal responsibility for war crimes can occur and, once it has occurred, be implemented (in the absence of which, this possibility is excluded), as well as the dynamics of its emergence and development, looks as follows.

The first condition. **Establishing the grounds and forms of criminal liability for war crimes in criminal law (international criminal law)**. The fact that there are no rules in state criminal law on criminal liability for serious violations of international humanitarian law (law of armed conflict) does not affect the criminal nature of such violations - criminal liability in the given case may arise under the rules of international criminal law. In addition, the principle of universal jurisdiction applies in this case, prosecution of the person who has committed a war crime can be carried out by any state.

The second condition. **Imposing an obligation to relate one's conduct to the interests of other persons, society, the state and the international community protected by international and national criminal law**. Let us explain to whom this obligation can be imposed and what it consists of. As mentioned above, a person with legal capacity is obliged to relate his conduct to the interests protected by the rules of law, including criminal law, and to prevent violations of those interests. In this case, we can speak of at least two categories of person.

Firstly, it concerns ordinary participants in an armed conflict (international or national)

who have reached the age of criminal responsibility (this age may be defined differently in the criminal law of different states, and in international criminal law differently from national criminal law). They may or may not belong to the regular armed forces. What is common to this category of persons is the obligation to respect the rules of international humanitarian law (law of armed conflict) and to prevent the clear and serious violation, by their actions, of the interests protected by these rules (including through criminal law) – the safety of the civilian population, the wounded, the sick, prisoners of war. In addition, military personnel are obliged to comply with the requirements of the manuals and instructions in force within the armed forces to which they belong, which as a rule implement the provisions of international humanitarian law (law of armed conflict).

Secondly, commanders (superiors) are obliged to correlate not only their own actions but also the actions of their subordinates with the requirements of international humanitarian law, to prevent and repress violations on their part and to take steps to bring perpetrators to justice.

The stage of appearance. A grave violation of international humanitarian law as applied in armed conflict, of the interests protected by its rules (as well as criminal law), gives rise to a real possibility of state (and in some cases interstate) coercive measures against the offender. The perpetrator faces the international community represented by states (with national criminal jurisdiction bodies established and operating within them) as well as special international bodies established (or about to be established) directly within it. These bodies are authorized to make a criminal assessment of the offences and their perpetrators and, in connection with this assessment, to apply state coercive measures.

Since, as mentioned above, the national form of specifying and implementing criminal responsibility for war crimes has priority, the power to make a legal-criminal assessment of an unlawful act committed and to identify and punish the person who committed it lies primarily with the state (taking into account the principle of universal jurisdiction, this may be any state which is affected to a greater or lesser extent by a serious violation and which has the capacity to exercise criminal jurisdiction).

In practice, these are most commonly:

– a state on whose territory an armed conflict is taking place and a war crime is committed;

– a state whose nationals are victims of the crime;

– a state whose national (a person under the jurisdiction of that state, e.g. a member of its armed forces) is alleged to be involved in the commission of the crime.

In certain cases, because of the scale and nature of war crimes and the inability or unwillingness of national law enforcement authorities to exercise criminal jurisdiction over perpetrators, this right may be exercised by a state (taking into account the principle of universal jurisdiction, this can be any state that is affected to some extent by a serious violation and has the capacity to exercise criminal jurisdiction).

In some cases, because of the scale and nature of war crimes and the inability or unwillingness of national law enforcement authorities to exercise criminal jurisdiction over perpetrators, this power lies directly with the international community (represented by the relevant international body), bypassing national law enforcement authorities. The emergence of criminal liability, as mentioned above, does not mean its realization, as it requires the work of state (in this case possibly also inter-state) law enforcement bodies.

The stage of concretization. It starts from the moment of discovery of the act of grave breaches of international humanitarian law applicable in armed conflict by a body or official competent to take a decision to initiate criminal proceedings (prosecution). Depending on whether the body or official belongs to the relevant national or international institutional mechanism, the specific rules for assessing information and deciding on the initiation of prosecution vary. Moreover, as a consequence, there are differentiated judicial and pre-trial procedures for obtaining and

examining evidence, the structure of criminal proceedings and the rules for formalising decisions taken on the criminal case under investigation and examination by authorities representing a particular state or acting directly on behalf of the international community. At the same time, the essence of this stage remains unchanged and, as in the case of criminal liability in general, consists in receiving and assessing the facts which prove or disprove the commission of an offence by a particular person and formulating this assessment in accordance with the rules laid down in the law of criminal procedure. In connection with this assessment, as well as taking into account the movement of the criminal case, the status of the person held criminally liable (suspect, accused, defendant) changes.

The concretisation stage, where the guilt of the person in committing the offence is established, confirmed by the evidence examined by the court (national or international), ends with the issuing of a conviction containing the criminal law measure applicable to that person. In addition, a person may be exonerated from criminal liability by a national or international criminal court, following the establishment of appropriate grounds provided for by national or international criminal law [3, p.152].

The stage of implementation. This begins with the entry into force of the verdict of a national or international criminal court, which has found a person guilty of committing a war crime and determined the type and extent of punishment based on national criminal law and/or rules of international criminal law. This stage ends at the time of execution of the sentence, which, as a general rule, coincides with the expiry or expungement of the criminal record. The stage in question contains the significance of the existence of the legal relationship of responsibility [21, p.63-64], since the person who has committed a war crime is sentenced by a court acting on behalf of the State or the international community and suffers the consequences of the act laid down by the criminal law.

The particularities of the enforcement stage in this type of criminal liability are conditioned, firstly, by the attribution of war crimes to crimes against the peace and security of mankind and, secondly, by the absence of proper means of enforcement by the enforcer of international law. The first circumstance relates to the possibility for an international criminal court to conduct a retrial if the proceedings before a national court were not impartial and independent and were designed to shield a person from responsibility, which is an exception to the principle of *non bis in idem*.

The absence of international criminal law enforcement bodies predetermines the importance of assistance by States to international criminal justice bodies in this matter. At the same time, an international justice body retains its functions of supervising the execution of the sentence by the state, and international standards play an important role in this respect.

Thus, **the main features of criminal responsibility for war crimes** that distinguish it from criminal responsibility in general are as follows:

– liability can be concretized and enforced in international or national criminal jurisdiction, the national form being the main one, while the international form is of an extraordinary nature and applies mainly in cases where the national law enforcement body, due to various political-legal factors, is deprived of such a possibility (the spectrum of such factors is quite broad: from the absence of the relevant rule in the national law or the unwillingness of the law enforcement body to apply this rule, to the cessation of the existence of the state itself, the inability of the official authorities to exercise their jurisdiction on the territory of the state, the criminal character of the conduct of the authorities and the state policy pursued) [9, p.82];

– the process of specification and implementation of liability is associated with the process of interaction between international law and domestic law, which, in turn, is determined by the priority of international legal regulation in this area, the specificity of institutional, functional and normative components of the international legal system, the capacities of national legal systems to ensure the enforcement of international obligations of states.

Conclusions. The research carried out allows us to reach a conclusion on the derived nature of the named liability, namely, criminal liability and legal liability. In this respect, the statement on the presence of their essential features and, at the same time, the differentiation of their specific content and manifestation is legitimate. Legal liability in general can be defined in the form of adverse consequences of a crime committed by the offender, provided by law, the occurrence of which is ensured by state coercive measures and takes place in accordance with the rules established by law to restore the violated legal order and its protection, to prevent the commission of similar and other crimes.

In order to highlight an independent type of legal liability it is necessary to consider:

the specificity of the grounds, forms and measures of legal liability and its adequate normative-legal reflection;

the presence of an independent offence with its own characteristic subject matter;

the specificity of the mechanism and procedures for the implementation and enforcement of legal liability.

Criminal liability as an independent type of legal liability has a significant peculiarity in its grounds, in the measures of state-coercive impact, in the order of concretization and implementation. Criminal liability, as well as legal liability in general, should be considered in the dynamics of its development.

Given that the legal relations linked to the implementation of criminal liability are clothed in a strictly procedural form provided for by criminal procedural law, and that the person who has committed a crime, in the event of his conviction and punishment, is subject to deprivations and restrictions provided for by executive-criminal law, criminal liability means the implementation not only of legal-penal relations, but also of procedural-penal and executive-penal relations.

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DEVELOPMENT PERSPECTIVE OF THE STATE BORDER MANAGEMENT SYSTEM OF THE REPUBLIC OF MOLDOVA IN THE CONTEXT OF IMPROVING THE EFFECTIVENESS OF INTERNATIONAL RELATIONS

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Summary

The processes currently taking place in the world require an essential strengthening of the role and functions of the state, one of the most important of which is the efficient functioning of the state border. This fact implies changes in the approach of state policy in the field of borders, adapted to modern conditions.

For the development of the functioning system of the state border of the Republic of Moldova in order to achieve national interests, favorable external and internal factors persist: in the geopolitical context, in the context of regional security, in the context of achieving the objective of European integration, in the context of maintaining social-cultural relations. The peculiarities of the internal and external political situation promoted by the neighboring states, Romania and Ukraine, which have an influence on the functioning of the state borders in relation to the Republic of Moldova, offer the possibility of developing cross border cooperation – a form of synergy in the economic, social-cultural development of the border territories, joint approach and action to increase the efficiency of international relations based on the principle of a geopolitical matrix built by the Republic of Moldova with neighboring countries.

Keywords: state border, state policy, system, border management, international cooperation, cross border cooperation, geopolitical matrix.

Introduction. In international relations, state borders play a special role. From the origins of the statehood of the Republic of Moldova, the legal understanding and normative basis for the functioning of the state border have been established: "*the state border is the line separating the territory of the Republic of Moldova from the territories of neighbouring states by land and water, and vertically it delimits the airspace and subsoil of the Republic of Moldova from the airspace and subsoil of neighbouring states*" [1]. It is noted that "*guarding the state border is an integral part of the state security system of the Republic of Moldova*..." [2], thus defining the main objective of the state border – security. The barrier function is established as the main function of the border.

State policy of the Republic of Moldova in the field of the border during all the years of independence has not undergone significant changes: the state border, until now, is an element of the national security system, it is a *line* that separates the territory of the country from neighboring countries, ensuring barrier in its functionality. The introduction of the European integrated bor-

der management system into the national border management system [3] has not changed the approach to the functioning of the border, whose main purpose remains security. And if this requirement of the European Union enhances the security of the EU's external borders, then, taking into account that illegal migration and other specific risks for the EU are not such acute problems for the Republic of Moldova, this approach does not fully correspond to the national interests of developing international relations.

The conceptual approach to the role and practical implementation of state functions in the field of border policy in modern conditions should be aimed not only at ensuring the territorial integrity and independence of the state, although this is extremely important, but also at protecting and developing the economic foundations and promoting the social-cultural development of the state, which is largely achieved through the participation of border authorities in the development of international relations and cross border cooperation. In addition to this, the Moldovan border authority must actively participate in the implementation of the state's foreign policy for European integration, the foundation of which is economic integration.

Methods and materials applied. In this article, the method of analysis, synthesis, statistics and comparison have been widely used. The materials applied are summarized in the relevant normative acts and scientific publications in the field.

Discussions and results obtaind. For a new conceptual approach to changing the functions of the state border of the Republic of Moldova, favorable external and internal factors persist, namely: democratic form of government; civilizational characteristics – traditions and culture of the Moldovan people, with the corresponding influence of political consciousness; development of historical friendly relations established with neighboring countries and their peoples; ethnic identity of the community with Romania; common foreign policy objectives with Ukraine; ontological essence of the political space, which allows the formation of a common political space with the neighboring countries Romania and Ukraine in the form of a geopolitical matrix related to joint implementation of the main foreign policy directions.

In geopolitical and regional processes, the role and functions of the state border, as the author's study shows, must change, all the more so as the role of the state border of the Republic of Moldova in modern conditions is a strategic one, resulting from the following factors:

• In the geopolitical context: one of the specific features is the key geographical position of the Republic of Moldova, whose state border is located at the intersection of Central Europe, Eastern Europe and the Balkans, which consequently shapes it as one of the most important points on the geopolitical map, linking Ukraine and Romania – two states of major importance not only for the Republic of Moldova, but also for the whole region, from the perspective of ensuring security and economic development. At the same time, its geographical position gives the Republic of Moldova the opportunity to assert itself as an important part of the transport corridor that facilitates the interaction of the Eastern and Western European markets.

• In the context of regional security, the state border of the Republic of Moldova is the external border of the European Union. Border control and protection are necessary to prevent and combat cross-border threats such as drug trafficking, trafficking in human beings, illegal migration and smuggling of goods and so on. It is also worth mentioning the presence of the Transnistrian dispute and its impact on the state border of the Republic of Moldova. The existence of a conflict territory near the border creates risks for the sovereignty and security of the Moldovan state.

• In the context of achieving the goal of European integration, the state border of the Republic of Moldova is a link between the Republic of Moldova and the European Union, especially in the framework of the Association Agreement, signed in 2014. Border control and security are the key issues for strengthening relations with the European Union.

• In the context of maintaining social-cultural relations, the state border of the Republic of Moldova plays an important role in maintaining inter-ethnic, social-cultural relations with Ro-

mania and economic relations with Ukraine, supports and promotes regional cooperation and development. Ensuring the opening of the border in accordance with the legislation and bilateral agreements, the possibility and necessity of forming cross border cooperation is a condition for maintaining good neighbourly relations.

Moreover, the peculiarities of the functioning of the state borders of the neighbouring states, Romania and Ukraine, need to be taken into account. Thus, the situation at the border with Ukraine is generally stable, while there are threats associated with the projected increase in illegal migration, smuggling of goods, arms and ammunition transiting through the Moldovan territory. A system of interaction with the Ukrainian border authority, a normative-legal regulatory basis for the functioning of the common state border, has been created and is operational. At the same time, it is imperative to complete the process of demarcation of the state border with Ukraine, which will allow the full legal formalization of the rules of functioning of the border and border territories.

At the border with Romania the main security problems are related to illegal migration and smuggling of excisable products (tobacco and alcohol) into the EU. The state border between the two countries is not definitively regulated: it is not demarcated, which creates a functioning imbalance, undermines the sovereignty of the Republic of Moldova. As an external border of the European Union, the security aspect is dominant, which creates discomfort in the interaction between the population of both countries, which are in fact peoples with predominantly identical ethnic roots, traditions and values. It should be noted that Romania is a key partner in promoting the interests of the Republic of Moldova in the European Union, actively developing trade and economic cooperation with our country, cultural cooperation. In this regard, trade liberalisation measures have been introduced at the common border through the temporary suspension of import duties and quotas on products exported from the Republic of Moldova to the countries of the European Union. The border authorities are cooperating with a view to adapting the border in the interests of permanent liberalisation of the European market for the Republic of Moldova.

When forming a new system of functioning of the state border of the Republic of Moldova, it is necessary to take into account the *peculiarities of* the modern period affecting the state and its borders, such as:

– new information technologies, modern innovative and digital development processes, changes in information and communication processes, the increasing interactive potential of digital electronic communications and their integration on a global scale, leading to the emergence of information communities that transcend national boundaries. They are creating a new transnational territoriality, eroding national borders and contributing to the formation of a post-national world within international borders, affecting the ethnic and civic identity of the state;

– political space becomes one of the main characteristics of the state, and the border, in the sense of describing this space, plays a very important role, acting as a security factor in relations with other states. The Republic of Moldova should take steps to consolidate and extend the boundaries of its political space to the West, as well as strengthen the spatial factor by increasing its economic potential. Borders, in this respect, should contribute to the development of the economic dimension of cooperation;

– one of the key problems for the Republic of Moldova as a nation-state is the impossibility of ensuring an authentic merging of two identities – the national one within its official borders and the ethnic one, which in practice does not coincide with the area of its territory – representatives of the same ethnic group can be found on both sides of the border.

Thus, the study shows that modern global and regional realities, European integration, the processes taking place in the neighbouring countries, Romania and Ukraine, the threats, risks and challenges to which the Republic of Moldova is exposed, require changes in the state policy in the field of the border, in the functionality of the state border, primarily in terms of strengthening

international and cross border cooperation.

The common political and geopolitical interests of the Republic of Moldova, Romania and Ukraine, the common aspirations of European integration and cooperation with EU countries, the common geographical position and similar political horizons, based on the multiple historical relations with interethnic tangents, on the criteria of a single religion and cultural similarities, make it possible to form cooperation between the Republic of Moldova, Romania and Ukraine on the principle of *geopolitical matrix*.

The geopolitical matrix ensures the implementation of a balanced policy between competent authorities, good neighbourliness, and multi-stage cooperation. The objectives of the geopolitical matrix can be: policy of good neighbourliness and mutual assistance; coordination of foreign policy on strategic issues of accession to the European Union, NATO, the Schengen area and other possible international organizations and structures; cooperation in all areas: economic, financial, cultural, social and even military; concerted behaviour of each subject. The matrix of mutual cooperation primarily solves strategic problems. State borders in shaping this cooperation will play an important role.

Organizationally, the matrix can assume two possible structural options:

– *horizontal*, when the components of the matrix are on an equal hierarchical footing, regardless of the size of the territory, population, economic power, military potential of each of them, and their interests are oriented only towards the development of strategic directions and mutually beneficial cooperation;

– *vertical*, formed according to the political, economic and military power of the constituent parts.

The Republic of Moldova, based on its existing capacities and potential, its national interests, should opt for the horizontal structure, and the functionality of the border, in this sense, will become a strong point for the development of relations with the other Parties.

The system of operation of the state border of the Republic of Moldova, in order to improve the effectiveness of international cooperation, should be based on the concept of *management*, combining the aspect of border security and management, which will involve active cooperation, in addition to border authorities, customs authorities, bodies responsible for issuing travel documents and visas, law enforcement and migration management authorities and other national authorities responsible for the regional development of the country's territories, coordinated by the authority responsible for the development and implementation of the foreign policy of the state.

Border management actions should aim at expanding the political and economic space of the Republic of Moldova, through negotiations and trade facilitation, access of national economic agents, domestic goods and products to the international market. Similarly, optimal conditions should be created for the expansion of Moldova's cultural space by facilitating mutual cultural contacts.

The author proposes to approach the state border of the Republic of Moldova from two paradigms:

1) the current situation in Eastern Europe, threats and risks to the Moldovan state and the region as a whole;

2) Moldova's status as an EU candidate country and the changes that need to be made before integration.

At the *Moldovan-Ukrainian border*, in line with the state of affairs in the field of border security as a result of the ongoing war in Ukraine, it is proposed that the approach to the functioning of the state border should fully respect the requirements of ensuring national and regional security.

In this respect, the following priorities are relevant:

– fighting border crime, developed as a result of the armed conflict in Ukraine;

– the functioning of the state border with a view to the peaceful settlement of the Transn-

istrian conflict.

The political and war situation in Ukraine requires the Moldovan border authority to focus its efforts on strengthening the border barrier function.

The state border of the Republic of Moldova with Romania aims to operate exclusively in the interest of Moldova's integration into the EU in the following areas:

– integration into the political, economic and social area of the European Union, which involves the process of gradual elimination of the external borders between the Republic of Moldova and the EU in order to create single operating conditions based on the principle of the internal borders of the EU;

– developing economic relations. The economic potential of the European Union is essential for the support and economic development of the Republic of Moldova;

– development of cultural cooperation with Romania, a country with ethnic communities - sisters of the Moldovan people;

– development of cross border cooperation with Romania and regional development with European countries.

The conceptual approaches proposed for the formation of a new system of functioning of the state border of the Republic of Moldova require horizontal and vertical actions carried out at all levels of interaction (international, inter-state and inter-institutional), improvement of forms and methods of international and border cooperation.

The following actions are proposed *for the adaptation of state border policy*:

– to increase the efficiency of border management by improving international relations, which will primarily involve developing cooperation on border issues with the EU, Romania and Ukraine. One of the solution instruments is the integrated border management mechanism, which covers the control dimension of cross-border processes;

– establishing common border policy vectors with the Ukrainian side in order to strengthen the European security belt, an imperative to which both candidate countries are committed. These common visions will lead to intensified international cooperation in the Eastern European region to ensure regional security and will contribute significantly to the implementation of agreements and action plans with the European Union in preparation for accession;

– establishing more efficient border relations with Romania. In view of the intentions, predispositions and prospects of the Republic of Moldova's accession to the Community area, the state border must become, as a finality, an internal border of the European Union, regulated at international level. Achieving this objective will reduce pressure on the principle of the country's sovereignty and increase the country's capacity on the international stage;

– the orientation of the European Union towards consistent and effective support to the Republic of Moldova in strengthening the Moldovan-Ukrainian border control capacity and opening the Moldovan-Romanian border. This will accelerate the process of Moldova's accession to the EU.

Thus, in the current circumstances, the actions envisaged for the adaptation of state border policy should be consistently supported by practical measures to change border relations, both at bilateral (inter-state) and international level.

At the national level, the following *organisational and regulatory measures* are proposed for the Republic of Moldova in the context of improving the efficiency of the organisation of the functioning of the state border:

– with reference to the competence of the border authorities, their legal scope of action needs to be extended to the entire territory of the country, in order to make the chain of actions for preventing, detecting, prosecuting and bringing to account breaches of border legislation more efficient. In this way, the Border Police and the Customs Service will meet the European standards of ensuring border security – a component of the national security system;

– at the Moldovan-Ukrainian border is required:

1) further development of the concept of joint actions and interaction between border authorities, including exchange of data and information between competent authorities, joint control at border crossing points, joint patrolling and operations, crisis intervention;

2) increase the presence of Moldovan border authorities on the uncontrolled Transnistrian segment (joint border patrols to ensure proper border control);

3) to ensure permanent and complete control of migration flows on this section of the border through the operationalisation of information exchange on persons and means of transport crossing the Moldovan-Ukrainian state border.

In order to increase the effectiveness of the functioning of the state border with Ukraine, it is necessary to transfer the border protection strip to state ownership with the transfer of management to the Border Police [4]. In the same context, the support and assistance of the relevant EU bodies is needed in the management of the common border with Ukraine in accordance with the principles and standards of the functioning of the EU external borders.

Harmonisation of rules for border activities should include standard operating procedures for integrated border management, with coordinated use of material and human resources in accordance with the specific risks and challenges. Moreover, an adequate level of border management can be achieved by combining and using European information systems and databases applied at the EU external borders, such as EUROSUR, EURODAC, ETIAS, SIS, SIV, etc. To this end, the border authority needs to strengthen its role as an associate member of FRONTEX Agency in order to obtain extended rights to use these information systems and databases at the Moldovan border.

The *Moldovan-Romanian border* is the most requested from the point of view of interaction between the population of the Republic of Moldova and Romania on economic, social and cultural aspects, so its functionality should allow maintaining all forms of cooperation for individuals and legal entities of both countries. The main organisational element of this cooperation is *cross border cooperation*.

Cross border cooperation implies direct cooperation between the neighbouring territories of the Republic of Moldova, Romania and Ukraine, geographically located along the common border, which makes it possible to use not only the peculiarities of these territories, but also the possibility of large-scale use of the resources and potential of the border to increase the efficiency of economic, ecological, social-cultural cooperation, as well as the possibility of developing various forms of international cooperation.

Cross border cooperation should become one of the most important directions of the state border policy for the development of inter-state cooperation, which will make it possible to make extensive use of the peculiarities of the border territories, which can be attributed to a number of favorable factors, such as: spiritual, social-cultural kinship ties, characteristic of the Republic of Moldova and adjacent territories of Romania, the presence of common foreign policy, economic, social, environmental interests with Ukraine.

Therefore, the Government of the Republic of Moldova must take all measures to organise cross border cooperation with Romania and Ukraine, which will be fully in line with the national interests of the Republic of Moldova.

In this respect, it is considered necessary:

• Increasing the role of border management bodies in implementing cross border cooperation projects. All projects related to the interaction between the territories and administrative bodies of the Republic of Moldova and neighbouring countries should be approved and properly coordinated with the border management authorities. In turn, the border authorities should properly apply the rules of the state border regime and of the border zone to support the development of the border territories.

• Creating appropriate infrastructure conditions for public interaction. These provide for

the development of transport and communications infrastructure at the state border through: the construction and operation of a sufficient number of border crossings; the modernisation and extension of the cross-border road and rail network; the facilitation of freight and passenger transport; the development of digital infrastructure for e-commerce and cross-border services. These measures will ensure the unhindered movement of transport and people across the border.

• Market liberalization by introducing and maintaining preferential conditions of movement for citizens of the Republic of Moldova, minimizing or eliminating import and export duties for domestically produced goods and products. These changes will significantly increase the economic potential and attractiveness of the national domestic product.

Strengthening bilateral relations by developing a constructive and open dialogue between the border authorities of the Republic of Moldova and Romania, interested in facilitating the functioning of the border. Regular exchange of information, consultations at technical and operational level, as well as the organisation of joint meetings and events will contribute to building trust and cooperation at the border. To this end, the border authorities of both countries should engage in dialogue with a view to standardising and unifying common border management processes and procedures, as well as focusing their joint efforts on combating criminal phenomena. Joint border control activities should focus on two dimensions: surveillance of border segments and border checks at border crossing points.

These approaches to the functioning of the state border of the Republic of Moldova require the modification of the functional principles of the border: the transition from the function of a rigid barrier for ensuring security, as currently provided, to the joint functioning of the barrier and contact functions, which offers, on the one hand, the possibility of an efficient development of economic, social-cultural cooperation between countries and the establishment of contacts between people, and on the other hand, provides a filtering effect on cross-border processes.

Conclusions. The proposed conceptual approaches to the formation of a new state border policy and a practical system of functioning of the state border of the Republic of Moldova, for the first time provides for the participation of the border authority in the formation of foreign policy, international relations and practical participation in their implementation.

Conceptual approaches for the formation of a new state border policy of the Republic of Moldova based on the proposed model, their approval at the governmental level and their planned implementation will increase the efficiency of the state border policy in the part of maintaining stability and security in the border area of the Republic of Moldova, increasing regional stability, improving conditions for the development of international cooperation with European countries, the European Union, cross border cooperation with neighbouring countries, Romania and Ukraine, as well as international cross-border legal processes and increasing the economic potential of the Republic of Moldova. All of them together will lead to the achievement of the main objective – the acceleration of Moldova's accession to the European Union.

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CURRENT TRENDS IN TRAVEL DOCUMENT FRAUD AT THE BORDER BETWEEN ROMANIA AND THE REPUBLIC OF MOLDOVA

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Summary

Checking the authenticity and validity of travel and supporting documents belonging to people and goods crossing the border is one of the main activities performed by the Border Police at the border crossing points. The current tendency in manufacturing and securing travel, identity (National Identity Cards) and supporting documents (Visas, Residence Permits, Driving Licenses, Registration Certificates) is to combine as many classical security features as possible in order to make reproduction more difficult.

At the international level there is the ICAO 9303 Document (International Civil Aviation Organisation) that recommends a minimum of security features and biometric data to be contained in travel and identity documents. This paper deals with the current tendencies relating to forging and counterfeiting travel and identity documents presented for border checks and achieves a comparison between genuine and forged or counterfeited ones. Also presented are the main elements that need to be checked by the border police in the first and second lines, as well as by the officers compiling the alert notices and the finding reports.

Keywords: border check, travel document, security features, forging, counterfeiting, polycarbonate, security paper, optically variable image, laser variable image.

Introduction. The use of counterfeit documents or the use of genuine documents by persons other than the holders through misuse of identity (impostors) represents a current serious issue that affects both the external and the internal border security of the European Union, as well as the borders of the neighbouring third countries.

According to Frontex Risk Analysis Report for 2023-2024, in 2022 there were reported a number of 8,262 forged documents (Table 1) of which 1,822 passports [1, p.54] at the external EU borders.

	2019	2020	2021	2022	Share of total	% change on prev. year	Highest share
Country of issuance							**Type of Document**
Poland	286	1 455	3 121	1 283	16	-59	Other (82%)
Ukraine	46	97	723	652	7.9	-9.8	Other (92%)
Germany	439	260	365	586	7.1	61	Visa (56%)
France	720	377	451	576	7.0	28	Visa (26%)
Spain	895	324	314	543	6.6	73	Visa (29%)
Italy	616	217	400	523	6.3	31	Visa (34%)
Belgium	186	144	231	439	5.3	90	Residence Permit (61%)
Greece	192	131	147	250	3.0	70	Visa (33%)
Hungary	101	169	329	176	2.1	-47	Border Stamp (78%)
Russia	16	16	50	160	1.9	220	Border Stamp (63%)
All Other	3 103	1 586	2 572	3 074	37	20	Passport (44%)
Type of Document							**Type of Fraud**
Other	164	1 551	4 601	2 248	27	-51	Counterfeit (96%)
Passport	2 691	1 006	1 294	1 822	22	41	Impostor (28%)
Visa	1 150	456	700	1 422	17	103	Fraudulently obtained (51%)
Border Stamp	699	740	963	1 242	15	29	Counterfeit (94%)
Residence Permit	855	530	668	1 014	12	52	Counterfeit (78%)
ID Card	1 041	493	477	514	6.2	7.8	Counterfeit (67%)
Total	**6 600**	**4 776**	**8 703**	**8 262**	**100**	**-5.1**	

Table 1. Statistic of forged documents detected on entry to EU area [1, p.54]

Having in mind the fact that, as of 31.03.2024, Romania has been partially applying the Schengen Agreement by eliminating checks at the air and maritime borders for the journeys between the Schengen States, the risk of use of forged/counterfeit documents at the external EU border, namely the Romanian-Moldavian border, is on the increase.

The main risks identified are:

– use of false travel documents such as passports, national identity cards or residence permits issued by EU states;

– use of false documents concealed in luggage. These documents can be detected following checks in border crossing points or they can be found in luggage based on profiling.

Another vulnerability at the Romanian-Moldavian border is represented by the war in Ukraine, of which third-country nationals subject to visa obligations for entering the Union try to take advantage. They will acquire counterfeit Ukrainian residence permits, and then using these documents, they attempt to enter the European Union stating that they are Ukrainian residents leaving the country due to the ongoing conflict.

Unfortunately, organised crime rings dealing with forging or counterfeiting travel or identity documents have access to a lot of online information relating to document security. At the same time, they have state-of-the-art technology at hand, such as high-quality scanners, copiers and printers which they use for the large-scale reproduction of genuine documents [2; 3; 4]. The increase in the number of detections of those who make use of forged or counterfeit documents suggests that the border police have a very difficult task in identifying and putting an end to this phenomenon. For this reason, the border police designated to perform checks at border crossing points need continuous in-depth training.

The current fraud tendencies in travel, identity and supporting documents have been presented in this paper, irrespective of the substrate used for their manufacturing (polycarbonate, hybrid or paper). This article highlights the main security features that can be easily checked in the first and second line at border crossing points, as well as the techniques used for the printing of the background pattern and personalisation that fraudsters try to reproduce. Only these elements were analysed, for, following the examination of several false documents identified at the Romanian-Moldavian border with a high degree of reproduction of security features and printing

techniques, they were found to be the most common and relevant for the majority of documents. This paper attempts to highlight the current tendencies in the forging/counterfeiting of travel, identity and supporting documents met during checks performed by the Romanian and the Moldavian Border Police at the border crossing points. The intention is also to bring added value to the training of forensic experts with a view to their reports.

The document examinations have been achieved with the help of the Foster & Freeman VSC 80i Video-Spectral Comparator and the Dino-Lite portable microscopes (with white, UV and infrared light spectrum) present in the specialist room of the School for Basic and Further Training of Border Police Personnel in Iasi.

Material and methods applied. In this paper, the security features and printing techniques most frequently used in genuine travel documents are presented. The study was carried out on a varied range of documents required for the border check (Identity Cards, Passports, Residence Permits, Visas, and Driving Licenses). A comparative analysis was carried out between the documents in question and specimen documents. The documents studied are produced both on a paper substrate (Visas, Passport Pages, Registration Certificates) and also on a polymeric substrate (Identity Cards, Passports Biodata Pages, Residence Permits, Driving Licenses). The analysis of these documents was carried out based on the typology, frequency or discovery rate. The study was conducted using the Foster & Freeman VSC 80i Video-Spectral Comparator and Dino-Lite portable microscope.

A video spectral comparator (VSC) was used to examine the different types of documents. By selecting different light filters (white, IR, UV, and spotlight), archaeometric and chemometric features that are not visible to the human eye can be highlighted. This can be used both in the second line of control at border crossing points for a detailed examination of suspicious documents and in forensic laboratories for expertise in order to confirm the false [5].

The first light source is made up of LED bulbs that operate in the visible and infrared spectrum, between 400 and 1000 nm. The LED lamps have wavelengths ranging from 400 nm to 700nm and are used for coaxial and diffracted light. UV lamps consist of vapour discharge tubes and provide three wavelengths: 365 nm (UVA), 313 nm (UVB), and 254 nm (UVC). The Video-Spectral Comparator (VSC) uses only 365 nm UV transmitted light. Another light source is the electric arc lamp, projected to produce a very intense light with a full white spectrum for a short period, "a flash tube" with wavelengths between 850-1100 nm [5].

The main functions of the Video-Spectral Comparator are to:

– modify visual contrast by selecting a special light source and choosing the filter spectrum to highlight the various additions, deletions, or security features of the document;

– perform measures or comparisons in view of detecting minor differences among documents;

– provide spectrometry and colourimetry for analysing different inks and pigments;

– manage case studies in order to conduct the analysis on categories of authentic documents and forgeries.

Discussions and results obtained. **Forgeries in documents with polycarbonate-based biodata page**. The polycarbonate substrate is transforming the field of identity document security. Used in passports, ID cards, residence permits, and driving licenses, this substrate consists of multiple heat-fused layers for unmatched durability and tamper resistance [6]. To further enhance security, polycarbonate provides a perfect canvas for advanced features such as: background designs, laser engravings, DOVID patterns, and VLI elements [6; 7]. The widespread adoption of polycarbonate by governments worldwide highlights its effectiveness in protecting sensitive identity information.

a) Background printing. The unique characteristics of offset printing make it highly suitable for document security applications. This indirect printing process utilizes a cylinder covered in a rubber surface for precise image transfer [2; 8]. Its core principle, the mutual repulsion of

water and fat, ensures a uniform ink application and crisp edges [2; 8]. The flat printing plate design enables the creation of fine lines and microprints difficult to replicate with other methods [9; 10]. This detail maintains clarity even when scrutinized with magnifying devices (Fig 1 a), b), c), a critical factor for security features [10; 11].

Figure 1d) illustrates a first example of a counterfeit passport with a counterfeit biodata page. Upon magnified examination with a microscope, the background design reveals clear signs of counterfeiting. The overall design appears blurry, the microprint becomes unreadable, and the lines are formed entirely of dots. These characteristics are indicative of reproduction using an inkjet printer, a method easily distinguishable from the high-precision offset printing employed in genuine documents.

In another case, the forgers used a thermal printing process to reproduce the offset background printing. While thermal printing offers counterfeiters ease of use and accessibility for replicating document backgrounds (due to various printer options and decent initial results on polycarbonate), its limitations become evident under scrutiny. As shown in Figure 1 e), high-quality thermal printers can achieve a somewhat convincing reproduction of the background design. However, a closer look reveals incomplete details and blurry microprint with shadows. This inadequacy becomes even more apparent in lower-quality thermal prints (Figure 1 f). Magnification exposes a foggy background and completely illegible microprint. These limitations make thermal printing a risky choice for counterfeiters aiming to create truly convincing forgeries.

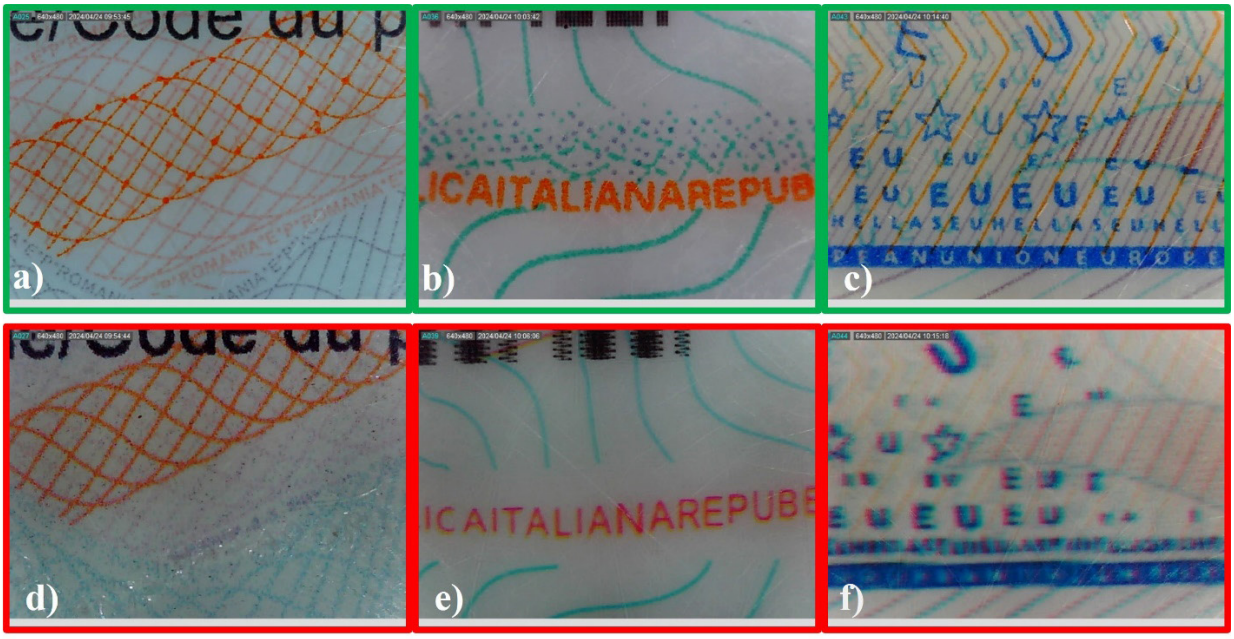

Fig. 1 Background printing: a), b), c) – offset; d) – inkjet; e), f) – dye sublimation.

b) Document personalization. Security documents such as passports, ID cards, residence permits, and driving licenses require secure personalization with the holder's identifying information. For documents with a polycarbonate substrate, laser engraving offers a robust solution. This innovative process uses a laser beam to blacken specific areas on a special foil, creating a permanent and tamper-evident record of the photo, personal data, and the Machine Readable Zone (MRZ) (Fig. 2 a). This method ensures that the information is both secure and clearly visible [12-14].

Counterfeiters may have access to commercial lasers, but that alone doesn't guarantee a convincing replication of genuine document personalization. The laser engraving used on official documents requires specialized calibration and intensity settings – knowledge that authorities

keep under wraps. Without this expertise, counterfeit attempts are readily distinguishable. Magnification reveals their substandard work (Figures 2 b) and 2 c), highlighting the gap between the use of commercial tools and genuine security methods.

Fig. 2 Personalisation: a) – laser engraving authentic document; b), c) – laser engraving counterfeit documents.

c) Diffractive optically variable image device (DOVID). DOVID elements offer advanced security features for passports and other identity documents. These elements use gratings to manipulate light, creating dazzling effects like 2D/3D images and colour shifts (Fig. 3 a), b) [15; 16]. The resolution, brightness, and animation potential of DOVIDs vary based on the specific design. Known by various brand names (Kinegram, Exelgram, DID, Pixelgram, Stereogram, etc.) [9; 13], DOVIDs are produced under strict security conditions, making them incredibly difficult for counterfeiters to replicate convincingly. To ensure maximum document security, genuine DOVIDs (Variable Optical Image Diffraction elements) are manufactured under highly controlled conditions, making them inaccessible on the open market [16-18].

This exclusivity leaves counterfeiters scrambling for inferior imitation methods. However, their attempts inevitably fall short, resulting in low-resolution copies that are easily exposed as fraudulent. Counterfeit attempts lack the same resolution and are easily distinguishable (Fig. 5 b) [18].

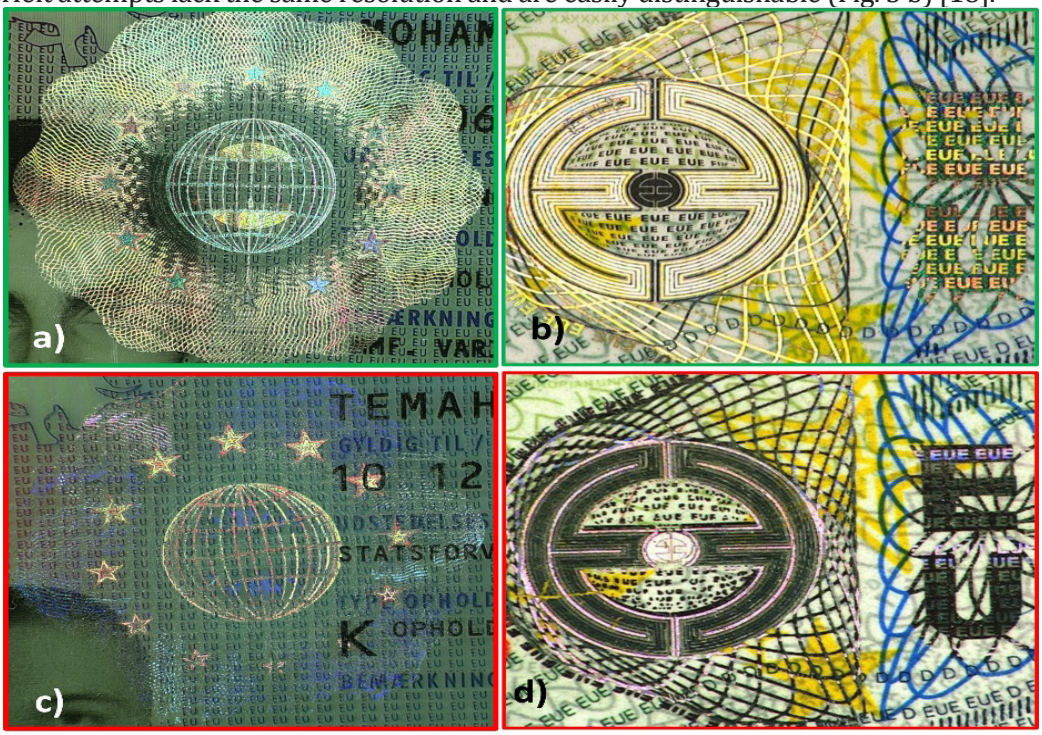

Fig. 3 Diffractive optically variable image device (DOVID)
a), b) –authentic document; c), d) – counterfeit document.

d) Variable laser images (VLI) is a laser-engraved image with tilting effects incorporated into passports with a computerized polycarbonate tab or other polycarbonate documents (ID cards, driving licenses, etc.) [6]. Variable Laser Images (VLIs) provide a visual security feature for important identity documents. They have a unique, tactile surface and the image shifts depending on the viewing angle (Fig. 4 a) [9]. This effect is difficult to replicate. Counterfeit attempts might mimic the texture, but one key difference is immediately apparent: the image in a counterfeit VLI remains unchanged when tilted (Fig. 4 b), making it easily detectable as a forgery.

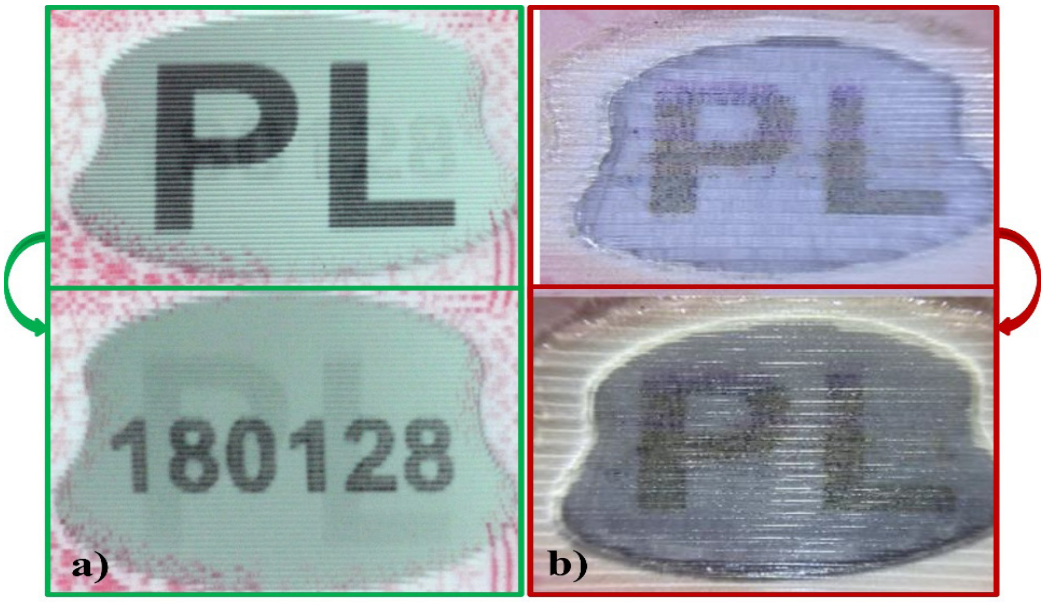

Fig. 4 Variable Laser Image: a) – authentic document; b) – counterfeit document.

Forgeries in paper-based documents. Security paper is one of the oldest substrates used to produce valuable documents and banknotes. Security paper provides a robust defense against the counterfeiting of valuable documents and banknotes. Its specialized manufacturing involves several safeguards: the exclusion of optical bleaching agents and the integration of intricate features such as watermarks, embedded fibres, plates, security threads, hi-lites, and tactile elements [13; 19].

a) Watermark it is one of the oldest security elements incorporated in the paper mass, but at the same time very easy to check with the help of transmitted light [2]. Despite its long history and straightforward verification process, the watermark remains a surprisingly effective security element in paper documents. It consists of an image, text or character motif embedded in the papermaking process by the displacement of the paper fibres due to the different densities of the paper substrate. On security documents, but also on banknotes, the multi-tone watermark is used, and the transition from dark to light tone is very smooth. This subtle feature, created by manipulating paper fibres during production, can take the form of images, text, or intricate patterns (Fig. 5 a) [13; 20].

While seemingly simple to check, authentic watermarks are incredibly difficult and costly to replicate. Counterfeiters previously resorted to printed imitations, but the recent availability of custom-made security paper poses a new threat. Forgers are now able to incorporate watermarks into fraudulent documents (Fig. 5 b), highlighting the evolving challenges of document security.

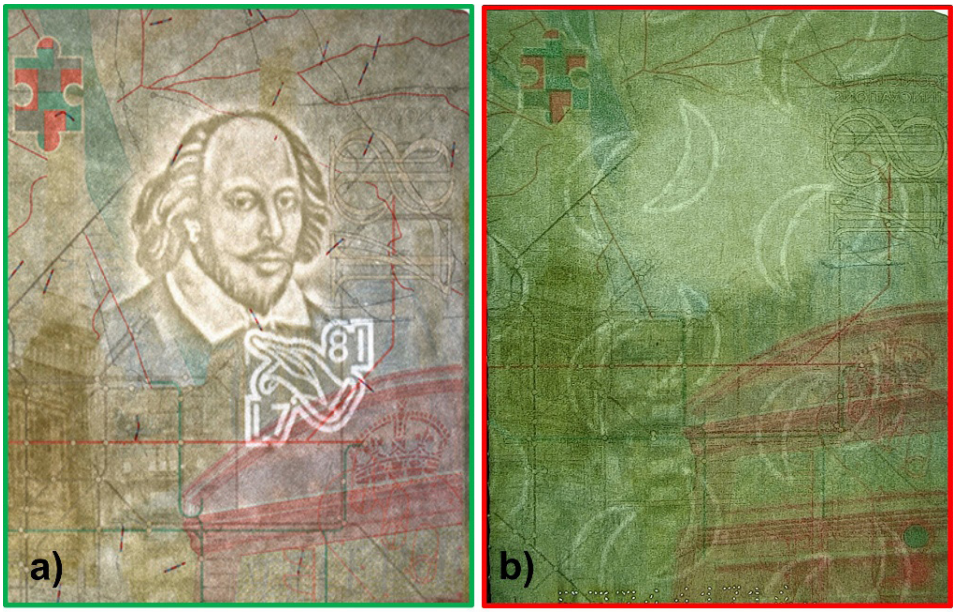

Fig. 5 Watermark: a) –authentic document; b) – counterfeit document.

b) Security thread are a vital security element embedded within paper documents during manufacturing [13; 21]. These strips, made from plastic, metal, or other materials, are visible under transmitted light and may contain microprints or intricate designs (Fig. 6 a) [21]. They can also be dark or light in tone and often react uniquely under ultraviolet light (Fig. 6 c). While counterfeiters may attempt to imitate them with simple printing (Fig. 6 d), these forgeries are easily exposed. A genuine security thread will still be visible under transmitted light (Fig. 6 a) even if exposed to ultraviolet light, unlike its counterfeit counterpart (Fig. 6 b). This discrepancy serves as a clear indication of a fraudulent document.

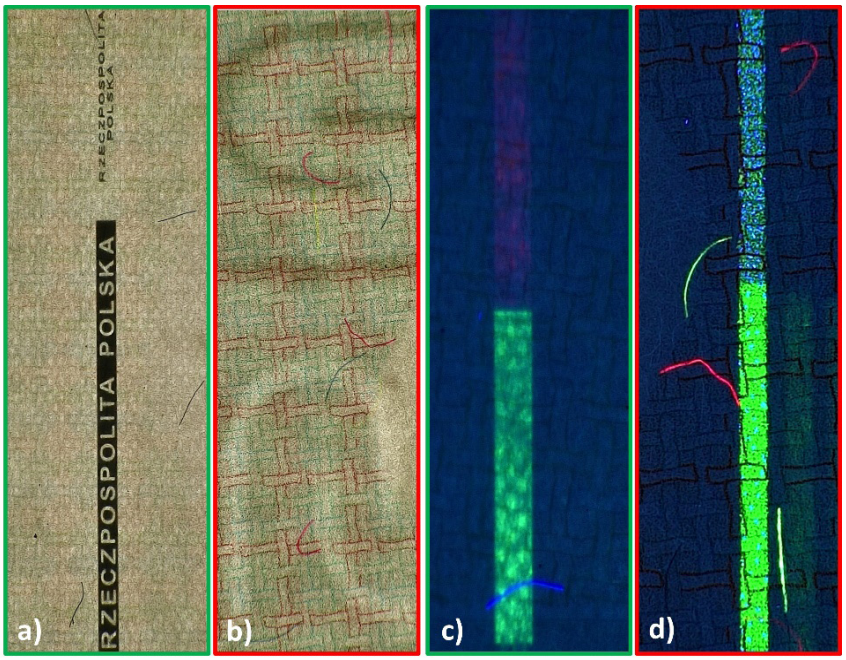

Fig. 6 Security threads: a) - transmitted light authentic document; b) – transmitted light counterfeit document; c) – UV light authentic document; d) – UV light counterfeit document.

c) Intaglio printing is a specialized technique where the image is etched into the printing plate. This creates a unique, tactile surface as thick ink is first applied to the printing plate, after which the non-printing (non-retracted) areas of the surface are cleaned of the ink. Under high pressure [8; 9], the ink transfers to the document, leaving a raised image or text. The pressure forces the media into the recessed areas of the printing plate. The ink thus remains on the surface of the substrate, the image or text being tactilely perceptible (Figure 7 a), b) [8; 10]. This tactile quality is difficult for counterfeiters to replicate. They often use flat, offset printing with added embossing.

However, a VSC examination with a lateral light spectrum reveals a key difference: instead of raised ink, the imitated print shows raised paper (Fig. 7 c), d).

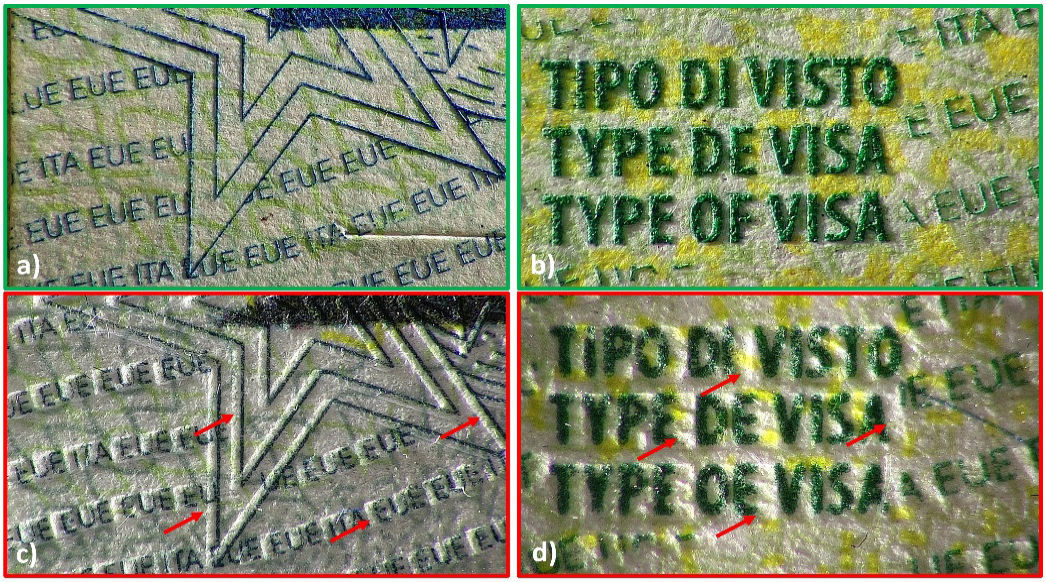

Fig. 7 Intaglio printing: a), b) – authentic document; c), d) – simulated intaglio printing.

d) Letterpress printing embodies a distinctive tactile quality [8; 10]. This direct printing technique features raised printing areas, resembling a stamp, and can be used on various materials. In security documents such as visas, permits, and passports, letterpress primarily serves the important role of printing sequential serial numbers [10]. The high pressure used in letterpress creates a unique characteristic: ink migration towards the edges, forming a distinctive border. This feature makes it easy to identify genuine letterpress (Fig. 8 a), c) [10].

Counterfeiters may attempt to mimic letterpress using classic printing followed by embossing (Fig. 8 b) or simple flat printing (Fig. 8 d). However, these imitations lack the true character and quality of genuine letterpress.

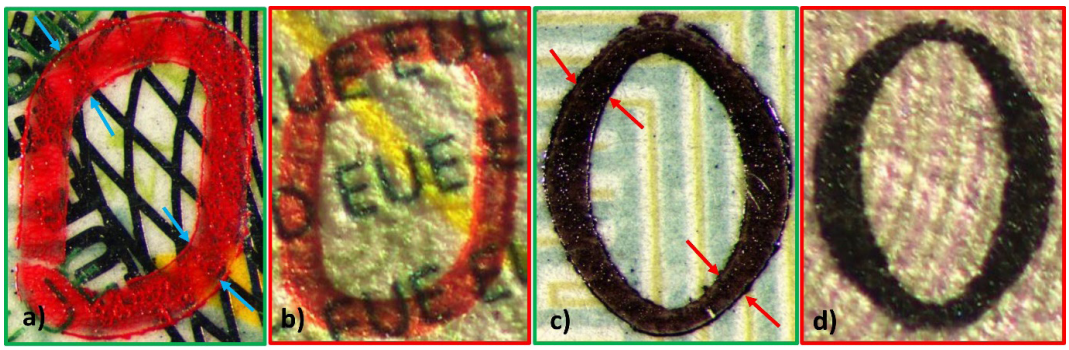

Fig. 8 Letterpress printing: a), c) – authentic document; b), d) – false document.

Conclusions. The risks and threats at the border between Romania and Moldavia are on the rise and can only be controlled by good cooperation between the two state border authorities. Forgery or counterfeiting of travel documents or supporting documents are, in many cases, perpetrated by organized crime rings that are used to committing different crimes on the territory of one or more states.

Based on the presentation of the main counterfeiting techniques, the paper permits easy identification in the first line of control of the travel documents susceptible to being nonconforming at border crossings, but also a complete analysis in the second and third line.

Also, the paper presents current trends in the forgery or counterfeiting of travel and supporting documents at the border between Romania and Moldavia, being a synthesis of the results obtained following the analysis of the main security features used to secure the documents. The study was done on the two groups of substrates, polycarbonate and security paper, used to produce documents, by highlighting the methods of reproducing the security features. The aim is to underline the importance of examining several security features because some have a high degree of reproduction and the authenticity of a document cannot be established after identifying only one single security feature.

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THE ROLE AND DUTIES OF PUBLIC ADMINISTRATION IN PREVENTING AND COMBATING CRIME

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Summary

The role of public administration, both central and local, is significant in a rule of law state. These institutions are empowered with a large number of responsibilities in various fields, including crime prevention. The legislator has assigned them some tools through the adopted norms, especially to Local Public Administration, which in its daily activity is entitled, but also obligated to cooperate with the coercive forces of the state in order to identify vulnerable situations within the society's cell – the family – where usually the source of incriminating situations for individuals is created.

Local Public Administration is the institution that, through cooperation with other state bodies, identifies minors in conflict with the law, individuals who abuse alcohol and commit illegalities – requiring forced hospitalization. Local Public Administration has the competence to carry out actions within a multidisciplinary team responsible for individuals in conflict with the law (including recidivists) who have infant children in order to avoid their parental rights from being revoked, and so on. Another quite important element consists of the policies developed and implemented by the Central Public Administration, of course through the local public administration primarily: information campaigns to prevent illicit actions noted to be repeated in a certain administrative-territorial unit (for example: ascertained by the complaints of the criminal investigation body) such as hooliganism or causing serious harm, extremely serious harm, and so forth – actions that fall directly within the stipulations of the Criminal Code of the Republic of Moldova.

Keywords: public administration, central public administration, local public administration, cooperation, responsibilities, prevention.

Introduction. In a state of law, public administration constitutes a quite important link in all existing fields. Without the direct involvement of this institution, it is practically impossible to establish a series of legal rules and implement state policies. This fact also refers to the field that incorporates the applicability of norms with an incriminating character to individuals, in criminal order.

Thus, public administration constitutes a set of activities of the central public administration and local public administration, as well as other figures of power, such as: the institution of the President of the Republic of Moldova and the Government. The activity of these institutions actually plays a very important role in resolving multiple legal relationships in society that intersect in many points with coercive force, as well as in correcting the state, such as the prosecution, police inspectorates, probation inspectorates, and last but not least, with criminal courts.

It is clear that this fact is not directly indicated in the criminal law, however, there are numerous special laws that regulate certain legal relationships that directly involve the public administration, namely the local public administration, often specifically at Level (1), and to a lesser extent, but still at Level (II) as well.

It cannot neglect neither the central public authorities, which are the authorities responsible for creating favorable tools for law enforcement. In a way, it can be noticed that public admin-

istration is part of the functioning mechanism of the entire state, and its absence from the whole system would create deviations and make it impossible to achieve certain proposed purposes, such as preventing and combating crime throughout the entire state – in the case of central public administration; and within the territorial-administrative boundaries – in the case of local public administration.

Methods and materials applied. "By methods we understand a set of intellectual operations (that can count from principles, norms) are used to achieve one or more objectives regarding understanding a phenomenon. For this purpose, certain technical procedures, which are auxiliary tools of the methods and should not be confused with them, can also be used" [11, p.24].

In the research for this paper, the logical method (which is closely related to the historical method, obviously) was primarily applied – a method widely used in any scientific research. Thus, the research was done primarily by using the laws – Criminal Code, Contravention Code, and Family Code of the Republic of Moldova; as well as Law No. 436/2006 on Local Public Administration; Law No. 98/2012 on Central Specialized Public Administration; Law No.140/2013 on Special Protection for children at risk and children separated from parents; Law No.231/2010 on internal trade; Government Decision No.886/2007 on the approval of the National Health Policy – by using the categories of logic, specifically the definitions provided in the mentioned laws, we are given clarity in the actual investigation of the subject. Analysis method is applying the breakdown of a whole into its component elements and studying each one separately, such as examining the listed regulatory acts above and extracting the norms specifically related to the public administration duties that are related to crime prevention. In fact, it is this method that prevails in this work.

In addition, the quantitative method was also applied, which provides a theoretical assessment based on the practices experienced in everyday life.

Discussions and results obtained. Public administration represents a set of executive-device activities regarding the organization of various social processes in society, or simply put, public administration is the equivalent of the executive power expression. Therefore, public administration can be carried out through the central specialized authorities of public administration as subjects of administrative law, but also through the bodies of local public administration (which are divided into local public administration at Level (I) and local public administration at Level (II) as subjects of administrative law. It is absolutely impossible to minimize their importance in the existence of a state.

The central specialized organs of public administration are made up of the ministerial administration – the ministries – and the out of ministries administration – other central administrative authorities subordinate to the Government.

In the context of the topic addressed, should be highlighted the specific activity of ministries. Thus, ministries are those bodies that implement the Government's policies and exercise, in accordance with the law, public administration in the areas of activity for which they are responsible (in accordance with the stipulations of Article 107 para.(1) of the Constitution of the Republic of Moldova). Here, considering it appropriate to mention the importance of the existence of all ministries. Regarding the prevention and combating of crime, they have regulatory functions aimed at developing and submitting for approval the normative and institutional framework necessary to achieve the strategic objective in that specific field. Here we can mention as a reference the Ministry of Justice of the Republic of Moldova, which has the responsibilities to create advisory councils, specialized commissions, working groups, involving representatives from other ministries, central administrative authorities, and public authorities, local public administration, the academic environment, civil society, the business environment, and field specialists for the development of draft normative acts, public policy documents, expertise, and consultations, as well as for examining other issues related to specific areas of activity. So, representatives of the Ministry of Justice, in collaboration with representatives of the Ministry of Internal Affairs, the Ministry of

Finance, the Ministry of Health, convene and form specialized committees and/or working groups within which they develop an action plan for the prevention and combating of crime.

In practice, this fact occurred by approving of Government Decision No. 948/2022, through which the mentioned ministries above have created a Program for the prevention and combat of crime for the years 2022-2025. Thus, public officials within the specialized public administration have been trained in researching the real situation of crime in the territory of the Republic of Moldova and have created a public policy document that aims to establish a set of objectives and actions in the medium term regarding the prevention and combating of crime in the Republic of Moldova in an efficient manner, focused on results that will reduce this phenomenon [12].

The program mentioned above provides a set of outlined objectives, such as: the continuous and dynamic reduction of all forms of violence, especially domestic violence and sexual violence; stopping abuse, neglect, exploitation, trafficking, and all forms of violence and torture against children; significant reduction of illicit financial flows, strengthening the recovery and return of illicit goods, combating all forms of organized crime and arms trafficking. Furthermore, taking into account the implementation of the Association Agreement signed between the Republic of Moldova and the European Union, central public administrations have been presented with a set of priority objectives specifically necessary in the prevention and combating of crime chapter, needing to intensify their fight against corruption, money laundering, arms smuggling, organized crime, as well as dismantling these, including human trafficking.

Therefore, the Government was forced to act through [12]: drafting a new and comprehensive policy document on the prevention and combating of organized crime; establishing and effectively strengthening a parallel system of financial investigations, focused on identifying, freezing, and confiscating assets generated by organized crime; developing an efficient system of cooperation with EUROPOL, EUROJUST, and other international partners regarding the investigation of organized crime groups, identifying, freezing, and confiscating assets generated by organized crime and located abroad; rationalizing to ensure the most effective allocation of competencies in the field of tax and economic offenses among different authorities; enhancing the involvement of Moldovan authorities in the Project on Organized Crime Analysis in Eastern Europe (EEOC); developing the capacities and skills of the Technical-Criminalistic Center for Judicial Expertise in accordance with European standards and best practices at local and national levels; continuing cooperation in the field of drug prevention through regional projects and programs, and fully aligning drug policies with those of the European Union, as well as fully participating in the EU-4Monitoring Drugs program managed by the European Monitoring Centre for Drugs and Drug Addiction; ensuring the strengthening of capacities within law enforcement institutions, prosecution offices, and judicial institutions to ensure cooperation with European Union agencies and Member States on the prevention and combating of human trafficking; enhancing capacities to ensure early identification, as well as providing appropriate assistance and support to all victims or potential victims of human trafficking, including legal, medical, psychological, and social assistance through professional authorities/NGOs, taking into account a gender-specific and child-sensitive approach; and others.

Following the implementation of the actions mentioned above by the ministries, certainly in constant cooperation, the application of these actions in practice is forthcoming in the daily activities in the field of law enforcement – the police, the prosecution, and other directly involved subjects in the prevention and combating of all types of crime.

So, through the mentioned Program, the specialized public administration bodies have outlined certain objectives that would facilitate the prevention of certain types of crimes in the territory of the Republic of Moldova, such as: revising the mechanism regarding access to weapons from the perspective of restriction, establishing rigorous monitoring, marking, and control procedures over weapons in the civilian circuit, namely by increasing the capabilities of record-keeping

and ensuring centralized control over the circulation of weapons by the year 2024, increasing awareness actions based on the Problem-Oriented Policy principle to sensitize civil society regarding the voluntary surrender of illegally possessed weapons, etc. or reducing national vulnerabilities regarding human trafficking and child trafficking, by creating a mechanism for storing disaggregated information regarding human trafficking and child trafficking or improving capacities to prevent and combat crimes that threaten life and property, by establishing a multidisciplinary mechanism in addressing criminal activities committed under the influence of alcohol, and so on.

Reiterating that the authorities and public institutions involved in the field of prevention and combating of crime are responsible for implementing the Program, such as the Ministry of Internal Affairs; State Chancellery; Ministry of Justice; Ministry of Foreign Affairs and European Integration; Ministry of Finance; Public Services Agency; and others. Certainly, in the application of the policies and objectives of the program of the central public administration expertise, the local public administration is actively involved, especially at first-level, which consists of the mayors throughout the country, led by the mayor as a representative of the local executive power.

Local Public Administration Level (1) has a range of duties, often through cooperation with the legal authorities – in the prevention and combating of crime – within the boundaries of the administered territory.

Starting from Law No. 436/2006 regarding local public administration – in accordance with the stipulations in Article 29 para.(1) letter t), starting from the fields of activity of first-level local public administration authorities, the mayor holds a series of basic duties, including the identification of violations of current legislation committed by individuals and legal entities in the administered territory, takes measures to remove or stop them, and, if necessary, notifies the authorities, which are obliged to react promptly, in accordance with the law, to the mayor's requests.

Thus, the above provisions, in correlation with the provisions of other normative acts, oblige the first-level local public administration to act in order to solve the violations.

For example, in accordance with the stipulations of the Law on domestic trade No.231 from 23.09.2010 – namely, the local first-level public administration is the one that issues the permissive document to operate in the local area, establishes the operating regime of the unit so that other legal norms are not violated. In this context, can be mentioned – the sale of alcoholic beverages after 10:00 p.m. or the prohibition of business activities after a certain hour by the economic agent in order to maintain public order and tranquility/peace, as well as to prevent possible illicit actions, as a result of the non-compliant activity of the respective economic agent. Usually, following the violation of these stipulations, actions of hooliganism by individuals who, at a late hour, have purchased and consumed alcoholic beverages or physical injuries specified in criminal law are noted. Therefore, following the reports of the judicial police body, the first-level local public administration, which is the issuer of the permissive document for economic activity, may submit a request to the court to suspend the economic agent's activity under the stipulations of Article 17^4 of the Law on domestic trade No.231 from 23.09.2010. Thus, the economic agent sanctioned for non-compliance with legislation and moral norms ceases activity, and as a result, no illicit actions are observed in that area anymore.

Local Public Administration Level (I) coordinates the activity of an Administrative Commission – which resolves a series of disputes within the administered territory, including materials accumulated by representatives of the police inspectorates submitted for examination. Moreover, the legislator provided for the possibility of appointing a finding agent within the local public administration for a series of contraventions in accordance with the stipulations in Article 29 para. (1) letter m^1) of Law No.436/2006 on local public administration. Their importance is not much less than the violations that fall under criminal law, given that there is a very fine line between them – the degree of harm caused. And the person who has committed a contravention found by

the finding agent within the town hall, for example falling within the stipulations in Article 273 para.15 of the Contravention Code, could commit a violation in the same area next time, but which already falls under criminal law – for example the manufacture of products for commercial purposes without accompanying documents, origin, quality, and compliance committed on a large scale – falling under Article No.246[2] of the Criminal Code of the Republic of Moldova.

We consider that administrative sanctions imposed by the local public administration, could prevent the commission of an offense in the future, in accordance with the above example of an economic nature.

Reporting on the increasing number of crimes committed by individuals who have not yet reached the age of 18, it is evident the importance of the duties of Local Public Administration at Level (I) and Level (II) (represented by community social workers) and the existence of the multidisciplinary team formed by the mayor of the locality under the stipulations of subpara 1, point 6 of the Chapter II of Decision No.228/2014 approving the Activity Regulation of territorial multidisciplinary teams within the National Referral System, which includes representatives of several state institutions that monitor and identify children at risk – meaning children whose parents abuse alcohol or use narcotic substances (or are involved in the distribution of these prohibited substances), thus endangering the lives and integrity of minors.

In accordance with the stipulations of the mentioned Decision, other types of multidisciplinary teams are created, already under the competence of the county councils (local Level (II) – Public Administration), made up of specialists designated from the organizations participating in the national referral system, with the aim of ensuring a systemic approach to the protection and assistance of victims and potential victims of human trafficking and the respect for fundamental human rights.

Within the Local Public Administration Level (I), the Committee for the Implementation of Monitoring Mechanisms in the educational activity of consumers of alcoholic beverages carries out its activity – established by the mayor's order, based on Government Decision No.886/2007 approving the National Health Policy. Thus, in the case of the police representatives identifying numerous illicit actions by an individual, who is always found in a state of alcohol intoxication, the police representatives submit the accumulated materials to the aforementioned Committee within the local public administration Level (I) for the necessary measures according to the current legislation. Usually, educational discussions are held with the individuals during the sessions; however, in the case of systematic violations, the respective committee is entitled to decide on filing a request to court seeking a ruling to refer the individual to compulsory treatment at a specialized medical unit, with the treatment expenses borne by the local administrative-territorial unit that initiated the request.

It is clear that these actions taken by the Local Public Administration – isolating a potentially dangerous person to society – would largely prevent the commission of a certain type of offenses to which the subject would be predisposed for example, domestic violence, which falls within the criminal norm provided in Article 201[1] of the Criminal Code of the Republic of Moldova, or acts of vandalism – Article 288 of the Criminal Code of the Republic of Moldova.

Conclusion. The aim of the work was to elucidate and outline the importance of Public Administration Authorities in the daily work of law enforcement agencies in preventing crime within the state.

Public administration truly represents an important link in the functioning mechanism of a rule of law state. As certain aspects have been researched in the present work, only a few of the responsibilities and competencies of public administration, especially of local public administration, which are related to the prevention and combating of crime in the territory of the Republic of Moldova, and without which the legal authorities would not have the possibility of conducting objective investigations, discovering offenses in proximate terms, but especially of stopping the

commission of other illicit actions by potential subjects of criminal law.

All the above-mentioned committees and working groups, created by the Public Administration Authorities, but especially the local one, are met only in cooperation with the law enforcement bodies. The majority of reports of illicit actions, either administrative or criminal, are accumulated and received specifically from police representatives, and the results of examining these reports often serve as the basis for undertaking actions to prevent the commission of offenses (for example, a minor in conflict with the law, identified by the multidisciplinary team as having multiple offenses, can be recorded by the sector police officer for future prevention of violations of criminal law by this minor).

The same policies and objectives for the prevention and combating of crime that are created and systematized by the specialized public administration authorities are strictly necessary for assessing the actual criminogenic situation and identifying the necessary monitoring and prevention tools.

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EXTENDED CONFISCATION IN LIGHT OF PROPERTY LAW

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Summary

Property right issues in legal proceedings are crucial due to the ongoing debates surrounding evidence standards and their practical implementation. Various presumptions and safeguards are in place to uphold the right to property, drawing from both national legal frameworks and international conventions, as well as established jurisprudence. It is acknowledged that individuals involved in criminal activities must be deprived of unlawfully acquired property and proceeds derived from criminal acts.

Consequently, the seizure and confiscation of such property serve as essential and effective measures in combating a range of criminal activities, including serious crimes, organized crime, corruption, and related offenses. Nevertheless, the crux of the matter lies in the role of evidence, which plays a central role in challenging presumptions and establishing guilt.

In a democratic society, where justice is paramount/ primordial, there is no room for double standards, selective application of justice, or unjustified encroachments on property right. Thus, ensuring a fair trial remains a top priority, guaranteeing that legal proceedings are conducted with integrity and respect for fundamental rights.

Keywords: property law, extended confiscation, criminal proceedings, law enforcement, property, guarantees.

Introduction. The right to property is one of the fundamental pillars of modern legal systems, representing an essential aspect of social and economic relations. At the same time, there are situations in which the state can intervene on this right, including through extensive confiscation, in the name of public interests or to combat crimes. This interplay between property rights and state authority raises many questions and challenges, highlighting the need for delicate balances between the protection of private property and the general goals of society.

Extended forfeiture refers to the action by which the authorities confiscate property that is not directly related to the crime for which a person is convicted. This practice is based on the idea that assets acquired through illegal activities should be subject to forfeiture, even if they are not directly related to the specific crime for which the individual is convicted. Thus, extended confiscation is primarily aimed at combating organized crime and illegally obtained assets.

The evolution of extended confiscation was influenced by social and economic changes. Authorities sought effective ways to combat serious crime, including by expanding the ability to confiscate assets acquired through illegal activities. However, this approach raises important issues related to the protection of property rights and ensuring fair and equitable procedures in confiscation proceedings.

A crucial aspect of the debate on extended confiscation is the relationship between the effectiveness of crime fighting and respect for the fundamental rights of the individual. Thus, the question arises as to how the need to protect private property can be balanced with the general objective of ensuring public order and security. Ethical and legal dilemmas also arise regarding the limits of the state's power to intervene in the private sphere of citizens and confiscate assets that are not directly related to the crime for which they are convicted.

The actuality of the subject. Extended forfeiture and property law are complex and constantly evolving topics that pose numerous challenges to legal systems and society as a whole. Addressing these issues requires a careful analysis of the balance between public interests and individual rights, in order to ensure a fair and efficient legal system.

The purpose of this article is to highlight the importance of the right to property in the current period, taking into account the numerous opinions in the doctrine with countless valences, as well as clarifying the content of this right represented by the three attributes, namely possession, use and disposal. At the same time, this article aims to analyze in detail the extended confiscation from the property right perspective, taking into account the relevant national and European jurisprudence.

Methods and materials applied. For the analysis and interpretation of the theoretical postulates and the factual material, we used various research methods: the documentation method, the content analysis method, the comparative legal method, etc. The theoretical-legal basis of the scientific article includes national and international normative regulations, related to the issue of confiscation and protection of property rights.

Discussions and results obtained. Starting from a legal and doctrinal foundation that concerns the aspects related to property rights, we reveal the fact that as early as 1748 the author Montesquieu stated in the work "Esprit de lois", that the origin and legitimization of property lies in the Civil Code laws, so that individual property is a civil law institution [1, p.2]. The property right is considered one of the oldest rights and at the same time one of the fundamental rights belonging to the individual subject (natural person), the collective subject (legal person) and the state.

The extended confiscation, being a security measure inspired exclusively by European law, reflects the last generation criminal policies in the sense of detection and transfer, from the property of the convicted person to the state account, of the goods obtained illegally. However, despite the noble purpose of administering justice and preventing criminal activity, widespread confiscation raises a number of important questions regarding the respect and protection of property rights.

Unlike the other safety measures provided by the criminal law which apply exclusively to the person, the confiscation, either in the classic (special) version or in the extended (enlarged) version, by virtue of the patrimonial character, is ordered on the person's assets, both aiming a patrimonial coercion of the person who commits crimes.

In this context, we come up with some rationales to help ensure the legality and security of legal relations, an appropriate environment, in which the institution of confiscation is properly applied. Thus, the limitations of the right to property in the criminal process are based mainly on the provisions of Art.106, 106/1, 132/1, 133 of the Criminal Code and Art. 6 point 4/4), 158-162, 202-210, 229/1-229/5 of the Criminal Procedure Code of the Republic of Moldova. From the provision of the Art.158 of the Criminal Procedure Code results that objects are recognized as criminal bodies if there are grounds to assume that they served in the commission of the crime, kept traces on them or constituted the objective of criminal actions, as well as money or other valuables or objects, documents that can serve as means for discovering and ascertaining the circumstances of the crime, identifying the guilty persons, or for rejecting the accusation or mitigating criminal liability.

According to Art.132[1] of the Criminal Code, goods within the meaning of Art.106, 243 and 279, are financial means, any category of corporeal or incorporeal, movable or immovable, tangible or intangible values (assets), as well as documents or other legal instruments in any form, including electronic or digital, attesting to a title or right, including any interest with respect to these values (assets).

At the same time, according to Art.6 point 4/4) of the Criminal Procedure Code, criminal

property means the property that can be seized under the terms of this Code, as well as the property that can be subject to special confiscation or extended confiscation.

The Criminal Code indicates in Art.106/1 that, other assets may also be subject to confiscation, if the value of the assets acquired by the convicted person for 5 years before and after the commission of the crime, until the date of the adoption of the sentence, substantially exceeds the incomes lawfully acquired by him and it is established on the basis of the evidence that the respective goods come from criminal activities of the nature provided for by law, circumstances to be assessed during the criminal investigation and when the case is resolved in court.

The Constitution of the Republic of Moldova guarantees in Art.46 para.(3) that the lawfully acquired wealth cannot be confiscated and also establishes the presumption of the lawful character of the acquisition of the property. The Constitutional Court of the Republic of Moldova, by Decision No.21/2011 regarding the interpretation of Article 46 para.(3) of the Constitution of 20.10.2011, recognized that there is an indissoluble link between the presumption of legality of property and the guarantees of a fair trial, in particular the presumption of innocence, the right not to contribute to self-incrimination, the principle of equality of arms, the right to an adversarial procedure in case of possible incrimination and/or the initiation of a trial for the purpose of depriving the person of property [2, para.25]. At the same time, he held that the legal security of the right of ownership over the assets that make up a person's wealth is inextricably linked to the presumption of lawful acquisition of the wealth. In the absence of such a presumption, the possessor of an asset would be subject to continuous insecurity, since whenever the unlawful acquisition of that asset would be invoked, the burden of proof would not be on the person making the claim, but on the possessor of the asset. Therefore, removing this presumption has the meaning of suppressing a constitutional guarantee of the right to property [2, para.40].

Another aspect that must be noted is that Art.21 of the Constitution of the Republic of Moldova enshrines the presumption of innocence as a constitutional principle. Therefore, any person accused of a crime is presumed innocent until legally proven guilty in a public judicial process, in which he has been provided with all necessary safeguards for his defense. In accordance with the Art.54 provisions of the Constitution of the Republic of Moldova, the restriction of the presumption of innocence is not allowed. We underline the fact that the legislator uses the term "offense", unlike the notions "crime" or "contravention", also known in other provisions of constitutional rank, this having important repercussions in the perspective of judicial processes of a criminal nature, or even non- criminal. According to Art.142, para.(2) of the Constitution of the Republic of Moldova, no revision can be made, if it results in the suppression of the rights, fundamental freedoms of citizens or their guarantees.

In the criminal proceedings or in the subsequent non-criminal proceedings, primarily considering the general principles and the international conventional framework, the presumption of innocence, through which the property finds protection, will continue to exist both as an autonomous principle that refers to the merits of the case, as well as by the preeminence of fundamental rights in relation to national inconsistencies, namely Art.4 para.(2) and Art.142 para.(2) of the Constitution of the Republic of Moldova, Art.1 paragraph (1) and Art.3 of the Criminal Code, Art.2, 6 point 4/4), or Art.7 para.(2) and others from the Criminal Procedure Code. Therefore, it will not be possible to state that if the suspect does not invoke an alibi by material evidence regarding the accusation submitted by the prosecution, then he is implicitly guilty, in the absence of evidence, on the basis of presumption, even less in the conditions where, due to the passage of time, the evidence could be incomplete. Secondly, as noted earlier in the specialized literature, the exploitation of the procedural right to remain silent is important, and silence cannot be taken as tacit evidence of the recognition of guilt, no evidence of the removal of doubts [3, p.53].

The presumption of innocence is also guaranteed by relevant instruments such as Art.11 of the Universal Declaration of Human Rights (hereinafter – UDHR); Art.6, para.(2)-(3) of the

Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter – ECHR, European Convention); Art.48 of the Charter of Fundamental Rights of the European Union (hereinafter – CDFUE). A special role belongs to Art.1 of the Additional Protocol to the European Convention which is dedicated to and protects the right to property, otherwise the only one in the Convention and protocols, which expressly protects the property of both natural and legal persons: "Any natural or legal person has the right to respect his property. No one can be deprived of his property except for reasons of public utility and under the conditions provided by the law and the general principles of international law. The preceding provisions do not affect the right of states to adopt the laws they consider necessary to regulate the use of goods according to the general interest or to ensure the payment of taxes or other contributions, or fines".

In particular, Directive 2014/42EU of the European Parliament and Council from April 3, 2014 [4], on freezing and confiscation of instruments and proceeds of crimes committed in the European Union, with reference to evidence in the case of extended confiscation, stipulates: "It is sufficient for the court to assess on the basis of probabilities or can reasonably presume that it is significantly more likely that the goods in question were obtained from criminal activities than from other activities. In this context, the court must consider the specific circumstances of the case, including the facts and evidence available, on the basis of which a decision on extended confiscation could be made. The fact that the value of a person's assets is disproportionate to his legal income could be included among those facts that lead the court to conclude that the assets come from criminal activities. Member States could also set a requirement for a certain period of time during which the assets could be considered to have come from criminal activities".

In the context, it should be mentioned that the aspects related to the problem of confiscation of assets as a tool to fight crime generated an abundant jurisprudence of the European Court of Human Rights. Thus, on May 12, 2015, the European Court of Human Rights (ECHR) issued the judgment in the case of Gogitidze and others v. Georgia [5], in which the plaintiffs claimed the violation of the rights guaranteed by the provisions of Art.1 of Protocol 1 of the Convention (property protection) as a result of the abusive confiscation of acquired assets (which belonged to a high-ranking state official), imposed by the court following the "Rose Revolution" in Georgia. The confiscation procedures were initiated in 2004 by the prosecutor, who suspected that the salaries received by Sergo Gogitidze in his position as Deputy Minister of the Interior and President of the Audit Office, in the amount of 7,667 euros for the entire period of public service could not have been sufficient to procure his property, valued at 450,000 euros, acquired during his term by himself, his sons and his brother.

The Court unanimously found no violation of the ECHR Convention by the extensive confiscation of property and assets on which there are suspicions of illicit enrichment, suspicions that were not contested by the applicants. Being applied for the purpose of fighting corruption, the confiscation is legal and does not constitute an excessive interference with the right to property, and requiring the applicant to prove the legality of obtaining the excessive income and property does not affect the presumption of innocence. The ECHR found that the decision of the national court observed a fair balance between the means used to confiscate the applicants' assets and the general interest in combating corruption in the public service. The applicants had a reasonable opportunity to present their case before the national courts and the national courts' findings were not arbitrary. The Court pointed out that the application of these measures was in accordance with the general interest, since the seized assets constituted an unjust enrichment of the claimants to the detriment of the community, the contracting states being entitled to a wide margin of appreciation when choosing how to institute their procedures crime investigation. The confiscation decision was only taken after a careful examination of the evidence and the applicants' financial situation, with the national courts concluding that there was a considerable discrepancy between the applicants' income and wealth. Thus, the plaintiffs were not denied their right to

a fair trial, a fair balance being maintained between the means used to confiscate the plaintiffs' assets and the general interest of society in combating corruption in the public service. There is nothing arbitrary in the fact that the plaintiffs had to prove the legal provenance of their assets thereby rebutting the well-founded suspicions of the prosecutor [6].

It is obvious that the reason behind the confiscation of illegally acquired goods and unjustified wealth held by persons accused of committing serious crimes while in public office, as well as their family members and close relatives it was a double one, having both a compensatory and a preventive purpose.

In the same vein, the Court has already observed in its jurisprudence that the common legal rules at European and even universal level can be said to encourage the confiscation of assets related to serious crimes such as corruption, money laundering and drug trafficking crimes without the prior existence of a criminal conviction is required. Second, the burden of proving the lawful origin of assets presumed to have been illegally acquired may legitimately be transferred to opposing parties in such non-criminal confiscation proceedings, including civil proceedings in rem. Thirdly, confiscation measures can be applied not only to the proceeds of crime, but also to assets, including any income and other indirect benefits, obtained by converting or transforming the proceeds of crime or their commingling with other goods, possibly legal. Finally, confiscation measures can be applied not only to persons directly suspected of committing crimes, but also to any third parties who hold property rights without the necessary good faith, with the aim of masking their illegal role in the accumulation of the illicit wealth in question.

The Convention on Money Laundering, Detection, Seizure and Confiscation of Proceeds from Criminal Activity of December 8, 1990, in force for the Republic of Moldova since September 1, 2002, establishes the states obligation to adopt legislative and other measures deemed necessary to allow the confiscation of instruments and income from criminal activity or goods, the value of which corresponds to these proceeds.

Council of Europe Convention on Money Laundering, Detection, Seizure and Confiscation of Income from Criminal Activity and Terrorist Financing from May 16, 2005, in force for the Republic of Moldova from 01.09.2008, stipulates in the Article 3 – Confiscation measures: "Each Party shall take such legislative and other measures as may be necessary to compel the perpetrator, in the case of a serious crime or crimes as provided for in national law, to prove the origin of the products or property subject to confiscation, to the extent that this obligation is in accordance with the principles of domestic law".

Therefore, the study of judicial practice shows that in all cases where the court ordered extended confiscation, the criminal activity of the defendant was argued, either by the systemic commission of prejudicial acts constituting a prolonged crime, or by the commission of prejudicial acts that are concurrent crimes, combined with the lack of sufficient legal income, including the inability of the property owner to prove the contrary. Consequently, the circumstances found by the court were sufficient to overturn the legal presumption of lawful acquisition of wealth and order the application of extended confiscation.

Last but not least, it is necessary to highlight the findings of the Venice Commission in the Interim Opinion on the draft law on confiscation in favor of the state of illegally obtained assets for Bulgaria, adopted during the 82nd Plenary Session (Venice, March 12-13, 2010), also taken into consideration by the Constitutional Court on the occasion of the adoption of Decision No. 18 from 22.05.2017, according to which: "It is important for the legislator to specify the level of evidence that must be respected by the authorities in order to obtain the confiscation of assets, in order to avoid that this confiscation is equivalent to an unjustified interference with the interested party, of his right to use the property or access to due process or his right to equal treatment. This specification is also a source of uniformity, ensures security and legal predictability, being a guarantee that the provisions regulating the confiscation procedure emanate from the legislative body, and

not from the judicial power, which is particularly indispensable in states where justice is less accustomed to confiscation procedures and threatened by corruption" [7, para.75].

Conclusions. In the conditions set out above, we appreciate the empowerment of criminal investigation bodies with tools to effectively fight crimes, prevent, compensate or restore the injured parties to the status prior to unjust enrichment.

On the other hand, it should not be ignored that, based on the standards, presumptions and guarantees enunciated mainly by the Strasbourg Court, a fair balance must be ensured between the general interest and the protection of property rights.

Therefore, it is true that criminals must be deprived of illicit assets and the benefits resulting from crimes, and confiscation of assets is a necessary and effective means of combating criminal activity, especially in the case of serious crimes, in the field of organized crime, corruption, or related crimes them. However, in criminal trials, the administered evidence has a central role in proving the perpetrator's guilt, or ensuring the fundamental rights and interests, including the presumption of innocence, delimits in all the particularities and circumstances, a fair trial from an arbitrary one.

So, ensuring the minimum standards that the goods, the values on which the confiscation is to be decided, is important and needs to be analyzed thoroughly when making decisions in relation to private property, because it is not only an indicator or foundation for the prosperity and economy of a state , but is the very foundation of freedom.

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PERSONALITY DIMENSIONS OF PUBLIC SERVANTS WITH SPECIAL STATUS: GENDER DIFFERENCES

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Summary

The distinct professional specificity of the public function with special status is largely configured by the type and the characteristic conditions for fulfilling the service duties provided by the legal norms.

The personality traits of the employees of the Ministry of Internal Affairs greatly influence the promptness and quality of the work they perform. The special system of subordination and hierarchy selects but also shapes personnel with distinct personality traits. The areas of activity managed by the MIA: public order and security; integrated management of the state border; combating organized crime; managing the migration flow, asylum and integration of foreigners; prevention and liquidation of the consequences of emergency and exceptional situations, civil protection, fire protection and provision of qualified first aid; ensuring respect for fundamental human rights and freedoms; defense of public and private property; records of population and citizenship, records of vehicles and vehicle drivers; state and mobilization of material reserves; the management of the functions with special status within the Ministry of Internal Affairs, require the involvement of the personality and the demonstration of the capacity at high levels.

The present study aims to identify the dominant personality traits in civil servants with special status, and to capture possible gender differences in this regard.

Keywords: personality traits, police officers, gender differences, police environment, Ministry of Internal Affairs, age, civil servants with special status.

Introduction. The term "personality" comes from the Latin word "*persona"*, which refers to a theatrical mask worn by performers to play roles or to disguise their identity, and represents the totality of experiences and effects, that the body and intellect jointly cause to a person. Personality is part of the conscious, joining the current of existentialism, in which the human being learns and draws conclusions from personal experience, that is, a qualitative experience [4].

The term personality has been defined in many ways, but as a psychological concept, it has developed in two senses. One of them concerns the differences that persist between people: classification and explanation of relatively stable human psychological characteristics. Another emphasizes the qualities that make all humans the same and that distinguish man psychologically from other species. This duality may help explain the two directions that personality studies have taken: on the one hand, the study of the increasingly specific qualities of people and, on the other, the search for the organized totality of psychological functions emphasizing the interaction between them and the psychological events within people and those social and biological events that surround them [5, p.317-330].

Personologists – specialists who systematically study personality – examine how people differ in the way they express themselves and try to identify the causes of these differences. Although other fields of psychology look at many of the same mental functions and processes, such as attention, thinking, or motivation, the personologist emphasizes how these different processes fit

together and fold to give each person a different identity. The systematic psychological study of personality has emerged from a number of sources, including psychiatric case studies that have focused on lives of suffering, from philosophy that explores human nature, and from physiology, anthropology, and social psychology [7, p.369].

One of the most influential integrative theories of personality is that of psychoanalysis, which was largely promoted in the 20th century by the Austrian neurologist Sigmund Freud. The field of investigation began with case studies of neurotic states, which included hysteria, obsessive-compulsive disorder, and phobic states, correlating them with sexuality [3].

Alfred Adler, Austrian psychiatrist, follower of Freud, disputed the importance of sexual motives. He described a coping strategy he called compensation, which he believed had an important influence on behavior, for example, if one ear is injured, the other ear can compensate by becoming more focused [1].

The Swiss psychiatrist Carl Gustav Jung, another follower of Freud's theories, focused more on individual differences, developing a typology of reaction styles, distinguishing between two means of modulating basic impulses, introversion (concern with the inner world at the expense of social interactions) and extroversion (preference for social interaction and experiencing inner impulses) [6, p.259].

Erik H. Erikson proposed eight stages of drive development, which continue over Freud's five stages of childhood (oral, anal, phallic, latent, and genital) and through three stages of adulthood. The stages unfold in leaps and bounds according to what is called an epigenetic process. According to Erikson, environmental forces exert their greatest effect on development in the early stages of growth, because anything that disrupts one stage affects subsequent stages [2].

Many people perceive the differences between men and women to be great – so great, in fact, that communication between the sexes can be difficult. Countless examples from popular culture reinforce this view of extreme gender differences. Men and women obviously have different biological roles when it comes to propagating the species, but how much they differ psychologically at the personality level is a more controversial question, one that requires empirical research to obtain an adequate answer. Whether the causes underlying psychological gender differences are evolutionary or socio-cultural, understanding how men and women differ in the way they think, feel and behave can shed light on the human condition.

The study of personality is particularly useful in attempting to examine psychological differences between the sexes. Personality is often conceptualized as the extent to which someone exhibits high or low levels of specific traits. Traits are the consistent patterns of thoughts, feelings, motives, and behaviors that a person exhibits in various situations (Fleeson and Gallagher, 2009) [9]. In other words, someone who scores high on a trait will exhibit psychological states related to that trait more often and to a greater extent than individuals who score low on that trait.

Which gender scores higher on that trait, on average, often characterize gender differences in personality traits? For example, women are often found to be more agreeable than men (Feingold, 1994; Costa et al., 2001) [10; 11]. This means that women, on average, are gentler and more altruistic than men are. Nevertheless, such a finding does not rule out the fact that men may also experience states of gentleness and altruism, and that some men may even score higher on these traits than some women. Therefore, the purpose of investigating sex differences in personality is to elucidate differences in general patterns of behavior in men and women, on average, with the understanding that both men and women can experience states across the full range of most traits. Sex differences in mean differences do not imply that men and women only experience states at opposite ends of the trait spectrum, on the contrary, there may be significant differences along with a high degree of overlap between the distributions of men and women (Hyde, 2005) [12].

Materials and methods applied. The present study aims to evaluate the personality of civil servants with special status, identifying the possible differences in their personality traits.

We may suppose that there are differences in personality traits between female and male special status civil servants.

The research used questionnaire survey on a sample of 70 subjects, aged between 20 and 40 years (average age being 30), employees of the Ministry of Internal Affairs (55% of the subjects are male and 45% female).

TABLE 1. Distribution of subjects according to sex

	Frequency	Percentage	Valid per-cent-age	Cumulative Per-centage
Male	55	55.0	55.0	100.0
Female	45	45.0	45.0	100.0
Total	100	100.0	100.0	

TABLE 2. Distribution of subjects by age

	N	Minimum	Maximum	Medium
Age	100	20	40	30

Personality was assessed using the ZKPQ Questionnaire, which is part of the CAS++ electronic platform [8]. Zuckerman-Kuhlman Personality Questionnaire - ZKPQ seeks to assess five personality factors that constitute the dimensions of the Alternative Five-Factor Model (AFFM) impulsive sensation search, sociability, neuroticism-anxiety, aggression-hostility and activity.

Discussions and results obtaind. The statistical data were processed using the statistical processing program SPSS 25.0.

Regarding the hypothesis *"we may suppose that there are differences in personality traits between female and male special status civil servants"*, this was confirmed by the results obtained from the statistical processing of the data.

There are statistically significant differences in female and male special status civil servants in terms of personality traits. Analyzing the average of the ranks, we notice that female police officers are more sociable Md=63,58, more anxious Md=58,76, but also more socially desirable Md=56, 65, while male police officers are more active Md=65,41, and more prone to impulsive sensation seeking Md=49, 29 (Fig. 1, Tab. 3).

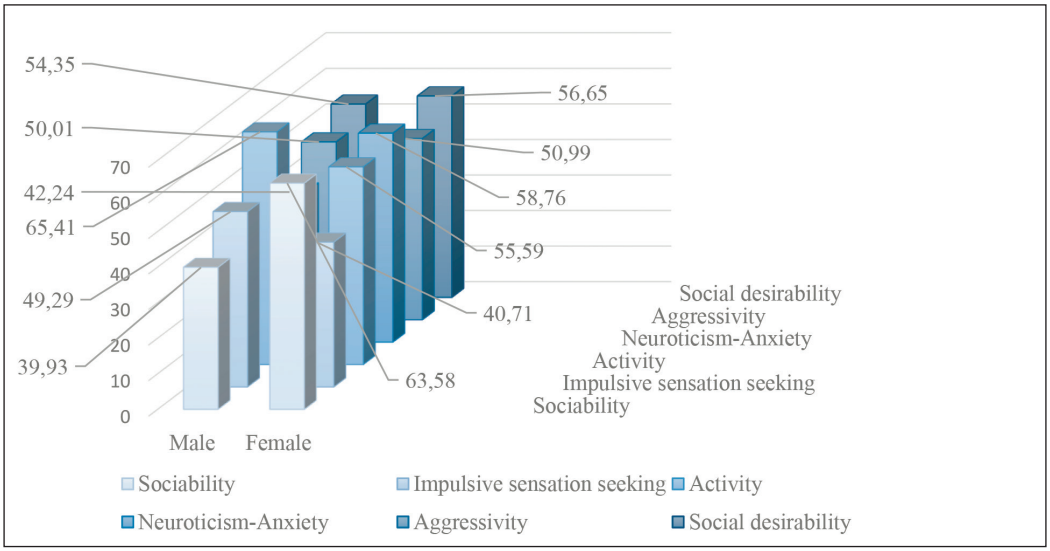

Figure 1. Comparative female and male means of personality traits

Table 3. Descriptive statistics of data between women and men in terms of personality traits

Criteria	Sex	N	Rank average
Sociability	Male	55	39.93
	Female	45	63.58
	Total	100	
Impulsive Sensation Seeking	Male	55	49.29
	Female	45	40.71
	Total	100	
Activity	Male	55	65.41
	Female	45	55.59
	Total	100	
Neuroticism - Anxiety	Male	55	42.24
	Female	45	58.76
	Total	100	
Aggressivity	Male	55	50.01
	Female	45	50.99
	Total	100	
Social desirability	Male	55	54.35
	Female	45	56.65
	Total	100	

The study highlighted the fact that civil servants with special status, as a professional category, are sociable and active people. They are surrounded by people and like to work with those around them. They also feel the need to be constantly active and practice physical activities. Police officers plan every activity and are not fond of change. They are patient with others and do not use harsh words or swear words, even when they are angry. They have self-control and do not worry about unimportant things.

However, there are statistically significant differences in female and male special status civil servants in terms of personality traits:

– Sociability – female police officers are more sociable compared to male police officers;

– Neuroticism Anxiety – female police officers are more nervous and anxious compared to male police officers;

– Social desirability – female police officers try to present themselves in a more positive image than in reality compared to male police officers;

– Activity – male police officers are more active compared to female police officers;

– Impulsive sensation seeking – male police officers are more prone to impulsive sensation seeking compared to female police officers.

The tendency towards social desirability of female police officers is a factor that can distort their personality profile, and neuroticism-anxiety is higher in women (as a vulnerability factor it can be manifested by the tendency of the subjects to worry frequently, to react with negative emotions in stressful situations - they get angry, scared, cry easily, or to feel vulnerable in the face of stress, while anxiety - fear about future and current events can cause physical symptoms such as rapid heartbeat and trembling) and impulsive sensation seeking presented higher in men

(subjects may resort to demonstrative, maladaptive, nonconformist, sometimes thoughtless behavioral acts), can create impediments to the successful performance of job duties within the police environment.

Conclusions. The study highlighted the fact that there are significant statistical differences related to sex in terms of personality traits, female police officers are more sociable, more anxious, but also more socially desirable, while male police officers are more active, and more prone to impulsive sensation seeking.

In future studies, we will try to evaluate other skills, attitudes and personality traits in police officers, in order to capture possible influences of the organizational culture on the personality of the employee within the force institution, called Ministry of Internal Affairs.

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PUBLIC-PRIVAT PARTENERSHIP IN CRIME PREVENTION: THEORETICAL ASPECTS

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Summary

Crime prevention is and will be a desire of human society as long as it exists. The specialized literature offers us many models of crime prevention, including victimization prevention, all with the role of ensuring a high level of population safety, implicitly a high level of quality of life.

In this context, we appreciate that the public-private partnership is the key to success in this complex crime/victimization prevention process, regardless of whether we are talking about primary, secondary and/or tertiary prevention.

The paper presents some theoretical aspects regarding the specifics of this partnership at the level of some types of crime and some agencies in Romania.

Keywords: crime prevention, public-private partnership, cooperation, assessment, risks and measures.

Introduction. Crime prevention is and will be a desire of human society as long as it exists. The specialized literature offers many models of crime prevention, including victimization prevention, all with the role of ensuring a high level of population safety, implicitly a high level of quality of life.

These brief arguments justify the maintenance of this title at the level of international, european and national conferences, and even more so, at the panel level in a conference of such scope. By symmetry Crime prevention, in an exhaustive approach, should involve indicators, but preferably international, European and national landmarks. Obviously, we will insist on the last two, but we will also point to the first category.

The prevention and social control of crime become key concepts in contemporary criminology, notions that must be found and articulated in a national prevention strategy, as a result of a certain criminal policy. This need can be motivated by at least two perspectives. At the macro-social level, the relatively high crime rate represents a serious threat to democracy, public security, the rule of law and institutional capacity in Romania. On the other hand, at the micro level, fundamental rights and freedoms are put at risk every time a citizen becomes a victim of crime. Consequently, crime generates fear among the population, weakens their trust in the authorities and their ability to actively engage in the economic development of the state. Given these premises, a crime prevention strategy is naturally imposed as a national priority.

As Prof. Andre Lemaitre rightly points out, "whether it is an academic or a professional concern, no observer can deny that in recent years we have witnessed a great resurgence of interest in crime prevention". [1, p.9].

In this context, we appreciate that the public-private partnership is the key to success in this complex crime/victimization prevention process, regardless of whether we are talking about

primary, secondary and/or tertiary prevention.

Another necessary introductory remark is that this partnership can be approached, at least in the field of prevention, from several perspectives. Thus, on the one hand this partnership (PPP) can be tracked, analyzed, evaluated at the level of some crime groups[1] and/or at the level of some institutions (public authorities- NGOs), but also through the lens of criminal justice costs [2, p.67-72], these from have been less studied in our country, for various reasons.

International landmarks. The United Nations Congress on Crime Prevention and Criminal Justice is the world's largest and most diverse gathering dedicated to this topic. It brings together decision-makers, practitioners, academia, intergovernmental organizations and civil society in the field of crime prevention and criminal justice. Congresses have been held every five years since 1955 in different parts of the world, dealing with a wide range of related topics. They have had a considerable impact in the field of crime prevention and criminal justice, influencing national and international policy and professional practice.

Among the merits of these congresses is the fact that they provide a forum for debates for:

a) the exchange of opinions between states, intergovernmental and non-governmental organizations, but also individual experts representing various professions and disciplines;

(b) exchange of experience in research, legislation and policy development;

(c) identifying emerging trends and issues in crime prevention and criminal justice.

The 14th UN Congress on Crime Prevention and Criminal Justice was held from 7 to 12 March 2021 in Kyoto,[2] Japan, in accordance with UN General Assembly decision A/DEC/74/550 B.The 14th Crime Congress was held with the general theme of "Progress in crime prevention, criminal justice and the rule of law: towards achieving the 2030 Agenda" bringing together over 5,000 participants from around the world. A record number of 152 Member States were represented at the Congress together with 114 non-governmental organizations, 37 intergovernmental organizations, 600 individual experts and several UN entities and institutes. Most participants joined online through a special event platform, while a limited number of participants attended in person at the Kyoto International Conference Center [3].

At the start of the high-level segment, member states adopted the Kyoto Declaration, under which governments agreed on concrete actions to promote responses to crime prevention, strengthening criminal justice and promoting the rule of law and international cooperation.

In addition to the official work of the Congress, 13 more special events were hosted on the platform of the event, as well as a large number of auxiliary meetings, all of which demonstrated the motivation to continue joint efforts in crime prevention.

European landmarks. The main challenges for a PPP at EU level are: aligning priorities and building trust. Alignment of priorities involves clearly defining the purpose and also setting common objectives[3], while trust building aims to include mutual assurance and maintaining the basic level of trust[4].

The challenges are different and the first one could be effective working relationships that involve clear work mechanisms[5], as well as defining roles and tasks.

Another challenge is establishing continuity, which means clear, duplicated and accountable communication. Sharing/disseminating information is another challenge, an aspect that involves practical obstacles, even reluctance at times.

[1] For example. economic-financial crime, IT crime, violent crime

[2] The congress was originally scheduled also in Kyoto, Japan, from April 20-27, 2020, but was postponed due to the global pandemic generated by COVID-19

[3] common goals and objectives that are viable for all partners involved.

[4] Lack of trust, due to existing prejudices, power imbalances or different values and norms, can be avoided by mutual reassurance, but also by organizing regular face-to-face meetings to build professional relationships.

[5] Clearly defining the roles, tasks and responsibilities of all partners will enhance the continuity and functioning of a PPP

Closely related to these challenges we talk about the PPP culture which has three pillars: policy, financing and evaluation. Each of these dimensions has in turn other components. Thus, we are talking at the level of policy making about operations and transparency. For funding, flexibility and variety are most relevant, while evaluation involves tracking and aiming to improve. Effective partnership relationships are based on effective cooperation, generated by the formal establishment of clear working mechanisms and a communication system within the partnership. Moreover, it tends towards a personalized policy where changes at the level of each partner should aim to reduce legislative, organizational or technical barriers to data sharing channels.

Public-private partnership in the European Union presents characteristics and nuances depending on the region and/or country. Chronologically speaking, the emergence of public-private partnerships was facilitated by the strong budgetary constraints imposed on member states by the Maastricht Treaty of 1992. Thus, the obligation of member states to reduce their public budgets determined a considerable decrease in public spending. As a result, the governments of the member states tried to look for viable solutions for the continuation of the projects and the achievement of the objectives set by different national strategies, and one of the solutions was the public-private partnership. In this way, the resources of the private sector were also mobilized for the achievement of common goals, with benefits for both the public and private sectors.

The public-private partnership contract (PPP) is perceived differently in the specialized literature depending on the perspective from which it is viewed, respectively:

– in the Anglo-Saxon doctrine, PPP signifies an understanding between the private and the public sector, as a result of which services of public interest are provided, which until then were provided only by the public administration. The main features of such a partnership are given by the following aspects: the sharing of the investment, the sharing of risks, responsibilities and benefits between the two partners.

–in French doctrine, the emphasis falls on the contract itself, which regulates a new form of association of private units for the exploitation and investment in public services. Greater attention is paid to the administrative contract, in this case the public-private partnership contract, which causes this form of collaboration between the public and private sectors to be more rigid [4, p2.].

Considering the diversity of forms of collaboration between public authorities and the private sector, it can be seen that in European countries there is no standard system of partnership, nor can it be imposed, but two dimensions can be identified, one political and one operational. The latter, being also relevant from the point of view of the topic studied, will be detailed as it can take three forms:

• private initiative for the public benefit;

• the administration's initiative to facilitate or encourage private activity in the public interest;

• joint venture between public institutions and private companies, firms or NGOs [4].

The member states of the European Union are divided into three large groups, from the point of view of the level of PPP implementation: states that have implemented PPP at an advanced level (Great Britain[6], France[7], Germany[8], Ireland and Italy), states that have implemented

[6] As for the UK, it is considered the pioneer of PPP adoption. PPP projects were introduced in 1992, through the establishment of an institution under the Ministry of Finance, called the Private Finance Initiative (PFI). In the UK, the preparation of a major PPP contract takes up to a year

[7] In France there is a long tradition of PPPs, especially in the field of infrastructure development concessions. Although the PPP system in this country is one of the oldest in Europe, the French PPP model has not evolved to the level that other European countries have reached in terms of PPP implementation, because there is no PPP policy. However, some forms of PPP have emerged in the field of crime prevention and social cohesion.

[8] In Germany, for example, there was PPP in sectors of activity such as the construction of hospitals, schools or prisons.

PPP at a medium level (Spain[9] and Portugal) and states that are at the beginning of the road in terms of PPP implementation, a category in which our country [4, p.3] also belongs.

Countries that are at an advanced stage of PPP implementation already have extensive experience in this field in many sectors of activity, such as infrastructure, health, education or even prison construction[10].

As for Belgium, Prof. Lemaître [1, p.51] proposes a problem-solving approach, emphasizing the SARA[11] method. As for the need for a PPP, it starts from the premise that the police cannot solve the problem of crime and insecurity alone. Therefore, police forces and other actors in society (citizens, schools, social services, etc.) must cooperate in prevention issues. Partnerships should be sought both outside and within the police service (all police services, even those not in direct contact with the public, must contribute to improving the quality of life). The collaboration is for the benefit of all and not only in the interest of certain groups of the population, only that the police are called to answer, to their partners, to their authorities and to the population. It is precisely for this reason that police personnel must establish consultation and participation mechanisms that enable dialogue between the police and the community. The community policing model is one policing model among others, and if it holds hope for prevention, it must be understood as complementary to the traditional policing model, which remains essential in our societies. If the community policing model fulfills preventive goals, traditional policing meets repressive goals.

In the same framework we can approach another "Neighborhood Watch" program in the United States and Great Britain.

These programs are based on the detection and reporting to the police of crimes or suspicious behavior that residents of a street/neighborhood/small town observe. By involving the residents of a street and/or their neighborhood in this project, a dialogue is established and maintained between them and the police, but also between those residents/residents through the exchange of information. These moments of exchange materialize periodically in meetings where the problems of the neighborhood are addressed and for which the participants look for concrete solutions. The essential premise is that participants encourage each other, be vigilant and report suspicious activity to the police. Even if these programs can be "classified" as programs with a double role: on the one hand, they aim to strengthen social control, and on the other hand, to prevent crime, by involving and making citizens responsible for what happens around them, precisely to create a more united community within a given area [1, p.52].

The implementation of PPP projects has demonstrated a series of advantages from the practice of these states, namely[12]:

- a better implementation of public projects from the point of view of meeting the execution deadlines and fitting into the assumed budgets;
- reducing construction costs and improving quality by harnessing the efficiency and innovative potential of the private sector;
- the staggering of financing costs both during construction and during operation, having the effect of reducing the immediate pressures on public sector budgets;
- a correct allocation of risks between the public and private sectors, resulting in the reduction of the overall costs of the project;
- stimulation of research-development, innovation and sustainable.

[9] In Spain, specific PPP legislation was first adopted in the mid-1990

[10] https://www.ceccarbusinessmagazine.ro/printeaza-articolul-2240/ acces in 3.05.2024

[11] An abbreviation for "Scanning, Analyse, Response, Assessment", each letter of the acronym referring to an operation, following the model proposed by the Public Ministry of Quebec (2004). Thus, the letter S refers to the situation itself, A for Analysis, assessing the extent of the problem, R for Response, determining the response offered, the solution adopted, the action plan drawn up and A for Appreciation, evaluating the results of the intervention, the effectiveness of the action of the plan, necessary adjustments..

[12] https://www.ceccarbusinessmagazine.ro/printeaza-articolul-2240/. Accessed: 03.05.2024.

National landmarks. 1. The legal framework for PPP in our country is provided by Law no. 233/2016 of November 24, 2016 regarding the public-private partnership, amended by Government Emergency Ordinance no. 104/2017 and Emergency Ordinance No.39/2018 regarding the public-private partnership.

The public-private partnership in the new Romanian legislation can take on two types 9 according to Art. 4, namely:

1. The institutional public-private partnership (which also existed in the old legislation) – is that public-private partnership made on the basis of a contract concluded between the public partner and the private partner, through which they constitute a new company, which will act as project company and which, after registration in the company register, becomes a party to the respective public-private partnership contract (a project company is required).

2. The contractual public-private partnership (new regulation, taken from the European best practices in the field of PPP, mentioned in the Green Paper) – represents the public-private partnership made on the basis of a contract concluded between the public partner, the private partner and the company of project whose share capital is fully owned by the private partner (a project company is not required).

Regarding the procedures for awarding public-private partnership contracts, the new law states that awarding a contract will be done exclusively through transparent and competitive procedures, namely open tender, restricted tender and competitive dialogue, regardless of the value of the contract.

The theoretical framework can be completed with the justifications of the partners through the prism of mutual advantages. Although the initial reasons that determine the emergence of a PPP differ between the public institution (primarily interested in respecting the principles of economy, efficiency and effectiveness in the use of public funds) and the private company (oriented to profit), the final goal is a common one, namely the provision of quality public services. Having a common goal, the creation and development of PPP presents advantages for both parties involved in the project, namely:

The new legislation has also clarified the scope of PPP, in the sense that it will include only those projects that are based on a substantiation study that justifies, from an economic point of view, the implementation of the project (project affordability analysis, risk allocation according to of the capacity of each party to assume, control and manage a certain risk, the definition of the way of reporting to the public debt, the possibilities of financing the project and the economic efficiency in the sense of value for money) and which demonstrates that the revenues to be obtained by the company of the project from the use of the good/goods or from the operation of the public service that forms the object of the project are generated, in whole or in the majority, by payments made by the public partner or by other public entities for the benefit of the public partner.

Advantages of the public sector (public institutions):

• attracting private financial resources to finance public works or services;

•cost reduction;

• the transfer of part of the risks of the project to the private partner, who, in addition to the risk of design and construction, can also assume other risks, such as the risk of wear and tear of equipment or the risk of force majeure;

• increasing the efficiency of public projects by using know-how and private management within public projects;

• shorter implementation period;

• better quality of public services provided to the population;

• the benefit, at the end of the project, of the right of ownership of the property realized through the PPP contract, which is transferred free of charge and free of any obligations to the public partner.

Advantages of the private sector (companies/NGOs):

• PPP represents a very good business opportunity for the private sector;

• the private partner benefits from the intellectual property acquired within the PPP;

• the financing of the project can be achieved not only from private funds, but can also include a component of public funds, coming from non-reimbursable funds and the related national co-financing.

As we showed above in the Introduction, we can follow PPP at the level of several aspects, one of them being the type of crime. Let's start with economic-financial crime. Economic-financial crime causes damages that are difficult to measure, because there is a wide range of forms of manifestation, forms that are in a permanent dynamic, but also because the material and moral damages are, to a large extent, difficult to notice and difficult to personalize, although there is a major impact on the social and economic environment [5, p.440]. First of all, government institutions, the business sector, the financial-banking environment are considered direct victims of this phenomenon. At the same time, we are also talking about the indirect victims, such as the citizens, those who bear a series of multiple consequences, as a result of embezzlement, tax evasion, fraud and illegal embezzlement, fraudulent privatizations. Business crime, by the size of the damage and the number of victims, produces an obvious imbalance in society as a whole, with a direct impact on the climate of public order and national security.

Obviously, the question is what can be done in these situations? What measures and what could be their nature? In order to ensure the general state of legality in the economic and financial field, it can be achieved if, in the prevention strategy of the ministry, an objective aimed at defining and implementing the concept of public-private partnership will be provided. This PPP can be manifested on two levels[13]:

"a*) partnership in the field of information exchange;*

b) partnership in the field of launching, carrying out and completing investigations and investigations on concrete cases in which the idea of the supremacy of the law is essential, for the benefit of the public and the private domain".

Such partnerships have been initiated and have worked in some countries, such as: the Netherlands, Great Britain, Switzerland, the U.S. and Belgium.

Obviously, this area regarding PPP in the matter of combating economic-financial crime must be clearly regulated, specifying the principles that govern the area, detailed procedures, the rights and obligations corresponding to the parties. The mentioned authors propose the reactivation of a profession more than 30 years ago, but which is developed in many European states: the police officer in charge of supervising [5, p.441] compliance with the law within enterprises, institutions, companies and societies active in the economy.

Within the MAI, the institution more involved in the prevention of crime and victimization is the Institute for Research and Prevention of Crime (ICPC). Created on June 1, 1998, ICPC has among its duties [6]:

– Elaborates and implements crime prevention programs/projects/campaigns that address various types of crimes.

– Carries out, in collaboration with the relevant departments of the police, governmental institutions and non-governmental organizations, sequential prevention projects in various fields of interest.

These are the campaigns that attract attention in this regard, but which can be considered more as victimization prevention campaigns:

– The national project for the prevention of thefts from homes Safe at Home takes place between March and December 2023 and is implemented in partnership with the Association Ro-

[13] Decreasing living standards, compromised healthcare, access to education and culture blocked by the illegal reduction of funds intended for these objectives

manian for Security Techniques – A.R.T.S. and the National Union of Insurance and Reinsurance Companies from Romania – U.N.S.A.R, as well as other partners at the territorial level. The concept of the project focuses on the theme of the importance of making owners aware of the fact that, by not adopting adequate preventive measures, sometimes among the most basic, in practice, they can "invite" thieves to commit crimes [7]:

– The Aripi Frante/ Broken Wings domestic violence prevention campaign aims to inform the general public about the serious consequences of abusive behavior in couples. The campaign is presented in universities, high schools, in heavily trafficked public spaces, and guides with useful information are distributed in all police stations, at the national level, and is carried out in partnership with the Necuvinte association.

– In 2023, the SigurantaOnline campaign will know a new stage, developed in partnership with the National Cyber Security Directorate (DNSC), the Romanian Bank Association (ARB) and Microsoft Romania. This is based on the results of the analysis Computer crime – malware attacks – forms and trends, carried out by the Institute for Research and Prevention of Crime and is dedicated to the prevention of computer malware attacks and implemented under the aegis of "STOP MALWARE - Your online safety depends on you".

The prevention of victimization, carried out through programs, strategies, is a dynamic element of Victimology [8, p.67]. If we are to refer to another state institution that makes the most of PPP, with great results, then we nominate: the National Agency for Equal Opportunities for Women and Men (ANES) [9].

As an example of good practices, in this sense, even if we do not find here the example provided by the legal framework presented in 4.1., we mention that a number of NGOs in the field participate in the activities/projects proposed by the public authority, but also vice versa, NGOs promotes and initiates various projects involving ANES. From the multiple campaigns and projects promoted, one representative in terms of finality and scope, I retained the VioGen - RoJust Project [9]. It takes place in partnership with the TRANSCENA Association, the ANAIS Association, the FILIA Center and the GRADO Association. The "VioGen - RoJust" project is a strategic action, in order to effectively implement the standards of the Council of Europe on human rights and aims at better protection measures against domestic violence, ensuring an adequate intervention, but also improving the legislative framework regarding the protection and non-discrimination of victims.

Conclusions. We notice that the public-private partnerships carried out in our country, at least those regarding the prevention of crime/victimization, do not strictly follow the forms provided for in the law.

In the case of many institutions subordinated to the Ministry of Justice (National Administration of Penitentiaries -ANP), the National Directorate of Probation -DNP), the Ministry of Internal Affairs (Institute for Research and Prevention of Crime -ICPC), the Ministry of Family, Youth and Equal Opportunities (the Agency National for Equality of Chances between women and men - ANES) this PPP takes the form of collaboration Protocols or contracts, with the assumption of rights and obligations by each party or parties involved.

In the case of the two authorities subordinate to the Ministry of Justice, we can talk about partnerships aimed at preventing recidivism, the target beneficiary group of the partnerships is represented by convicted or released persons. In the case of DNP [10], each probation service has a list of institutions from the community with which it collaborates in running specific programs, implicitly individual psychology offices and NGOs[14], the latter involved in the execution of some

[14] We mention some collaborators: Horsemotion Association, Timişoara 89 Foundation, Association for the Promotion of Traditions, Association 360*, Solidart Association, Pur Vis Dor Association, Vis Juventum Association, Maramureş Orthodox Women Association "Mironosiţele Femei", Romania-France Mutual National Association "Louis Pasteur" Brăila, Pro Prietenia Arad Foundation, Alcoa Fujikura Association, ALIAT Association.

obligations imposed by the court, such as unpaid activity, course qualification, reintegration program, etc.

We believe that PPP is a mutually beneficial solution for both public authorities and private organizations, including NGOs. This collaboration contributes to the achievement of the specific objectives of each of these entities and should be encouraged, whether we consider crime prevention or victimization prevention.

What constitutes a risk factor for these PPPs is the feedback, that is, the evaluation stage. In this sense, there should be objective entities to evaluate the effectiveness of the PPP concluded between two or more entities. Finding exemplary evaluation models is a much more difficult task. I did not find accessible or straightforward frameworks that can easily be used to evaluate such partnerships. Yet within the EUCPN we offer training on evaluation. From that training certain basic elements could be used to also create an evaluation design for a PPP.

For instance, a process evaluation focuses on the implementation of the PPP, how well the partners cooperate or whether actions are actually being executed. Here are some exemplary process evaluation questions:

– Are the interventions executed according to the plan? Does every actor know what to do and how to do it properly? If actors work together, is the collaboration going smoothly?

– How do all the persons involved (staff, participants,..) experience the cooperation?

Same thing can be done for outcome evaluations (to measure the effect of a partnership). Exemplary questions could be:

– Did the partnership achieve its purpose?

– Are the intended goals met in practice? If not, can this be dealt with?

– How can the partnership be improved?

These questions may open a new research direction regarding PPP.

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THE PROSECUTION'S REPRESENTATION IN THE INTERESTS OF THE STATE BY THE INVESTIGATING OFFICER VS. THE DEFENSE POSITION DURING THE EXAMINATION PHASE OF THE MISDEMEANOR CASE

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Summary

Achieving a perception among the population that justice is equitable is possible not only through the immediate application of sanctions at the time of the offense but also by the person who is neutral in the process where the finding is made.

Lately, precisely due to the field of misdemeanors, the frequency of committing misdemeanor acts, as well as the multitude of sanctions applied, generated society's perception of the justice process.

Adjusting the rules and procedures ensuring misdemeanor justice in the future will be a department through which the average citizen will be able to judge the efficiency and quality of justice in our country. This fact also requires us to examine more thoroughly the nature and regulation of the basic institutions of misdemeanor law.

Keywords: prosecution, defense, misdemeanor proceedings, examination of the misdemeanor case, decision on the misdemeanor case, equality of the parties in the process.

Introduction. The increased interest in the correctness of the procedure for identifying and examining cases of misdemeanor commission is largely due to the substantial expansion of the spectrum of acts considered misdemeanors, but not least due to the diversity of features of the misdemeanor procedure compared to the criminal one.

We must acknowledge that today we are facing a rather complex process, where each citizen is required to comply with a wide variety of norms. Many of them are de facto unknown to the average citizen, and largely, it is precisely for this reason that frequent violations result from not only the lack of knowledge of the content of the legal norm but also of its existence.

It is precisely for these reasons that the legislator accords the misdemeanor norm, both material and procedural, a „packaging" of simplicity.

At the same time, it is necessary to note that as simple as the procedure for examining and sanctioning the misdemeanor may seem, every person's rights, including procedural rights, must be ensured and respected. This is because a misdemeanor is nothing but a criminal act [6, p.15].

It is noteworthy that all the principles of criminal proceedings characterize contraventional proceedings. Only selectively, the legislator introduces some elements of administrative, non-judicial proceedings. For this reason, some users tend to confuse these processes, often applying specific rules only from administrative proceedings, without properly applying the rules of criminal proceedings.

One of the areas that we consider problematic in contraventional proceedings is related to the assertion of the accusation position.

From the outset, it must be noted that in contraventional proceedings, as in criminal and

civil proceedings, there is always a party accusing and a party defending against such an accusation. Although often such an accusation is presumed *„ex officio"*, where the interest in initiating contraventional proceedings lies with the state, we do not always have a specific person, other than the state, claiming injury to their rights as a result of the violation committed by the offender.

Hence arises the first scenario, wherein the reporting officer, who typically initially observes the commission of a legal violation, also represents the interests of the state or public interests, as well as those of each citizen collectively; yet, they are also the individual responsible for ensuring the equality of the parties in this process once they issue the decision on the case. This is because the principle of equality of the parties in the process constitutes one of the fundamental principles of a judicial proceeding, which combines the safeguarding of public interest with that of the personal interest of the parties involved in the process [1, p.9]. Particularly in the contraventional process, this objective is crucial for both the case examination phase and the decision-making phase.

Without delving into the intricacies of supporting the accusation in the contraventional process at each of its phases, it should be noted that one of the particularities distinguishing the contraventional process from the criminal one is the fact that in criminal proceedings, the burden of proving the accusation and the decision-making task belong to different persons and institutions, whereas in the contraventional process, typically the burden of proving the accusation and deciding the case belongs to the same person and institution. This is the rule. The situation where the burden of proving the accusation and making the decision on the case belongs to different persons represents the exception.

In this regard, without delving into criticism of such a system, it is appropriate to address some issues that, in our opinion, are intended to ensure respect for both the rights of the defense and the duties of effective prosecution, and consequently, a fair trial.

It is natural that a question like *„How fair is a process in which the accuser is also the decision-maker in the case"* would be a justified approach. At the same time, it must be understood that as long as the legislator does not return to the approach regarding the criminal nature of the contraventional act, where, in our opinion, revisiting the necessity of exclusively establishing the sanctioning burden for the court would be the only solution, therefore the issue regarding the effectiveness of achieving the principle of fairness in the process must be ensured by perfecting the mechanism of action of the constatation agent in relation to the suspected or accused person in the commission of the contravention.

Therefore, the issues we wish to address today are aimed solely at improving this process.

Among the problematic aspects we refer to, we could highlight two basic situations, namely those concerning the limits of supporting the accusation by the constatation agent when the decision on the case is adopted by the court and the limits of supporting the accusation by the constatation agent when the decision on the case is adopted by the constatation agent itself.

Thus, in cases where the decision on the contraventional case is adopted by the court, it is evident that the constatation agent acts within the contraventional process analogously to how the prosecution authority acts in the criminal process. Before the court, a distinct procedure is initiated, according to the distinct phase of the process, and the culmination of the examination/finding phase for the constatation agent in this case, being the drawn-up contravention report with the decision to refer the case to court represents a request to initiate the examination procedure before the court, a matter valid for a multitude of European countries [p.186].

At the same time, appearing before the court, the constatation agent traditionally supports the accusation, doing so in the same manner and following the same rules as the prosecutor in the criminal process. The court in this situation acts as an arbiter, examining the case by assessing the evidence presented by the constatation agent in his capacity as an accuser, but also opposing them, and the evidence presented by the defense.

The decision adopted by the court will not necessarily result from the intimate conviction of the constatation agent.

In cases where the competence to decide on the contraventional case belongs to the constatation agent, he operates within the contraventional process in two roles. The first role - in the phase leading up to the adoption of the decision - is analogous to how the prosecution authority operates in the criminal process. The second role - acting as an arbiter of the accusation and defense - is analogous to the court.

If we were to analyze it theoretically, for the constatation agent, in the contraventional process where he has the competence to issue the decision on the case, there should be a *„split"* in personality, where on the one hand he should think, analyze, and plead as an accuser, and on the other hand, he should think, analyze, and decide neutrally, similar to the court.

What does it mean for one person to think *„in the place of two people"* or *„as two people"*? This would imply the expression *„Regarding this situation, I have an opinion, but I, with this opinion of mine, do not agree."*

It is certain that the difficulty of ensuring the objectivity of the constatation agent, as well as the equality of the parties in the contraventional process, by incorporating the roles of accuser and decision-maker, is evident.

In the same vein, we understand that the legislator has advocated for expediency (celerity) in the contraventional process, underestimating the effects resulting from the psychological difficulties of a person's capacity to decide (sanction) on the matter in which they also accuse.

At the same time, for the constatation agent, it is important that, regardless of these particularities, they ensure the rights of the defense, as well as an effective accusation.

In this regard, although the contraventional law does not expressly provide for it, we would still propose considering certain particularities, which could potentially become part of the legal text in the future. We refer to the fact that once the constatation agent shapes the decision on the case within the contraventional process, they simultaneously, throughout the examination of the case, position themselves not only as the accuser but also as the arbitrator (analogous to the court). Thus, the constatation agent, along with their role as an investigator and administrator of evidence used for accusation, constantly, during the examination of the case, also acts as an arbitrator (court).

We are in an analogy of the criminal process where the judicial examination is carried out concurrently with criminal prosecution. Moreover, this occurs in the same subject.

This, in such a case, dictates the necessity for the constatation agent to provide the opposing party - the defense - with all the possibilities it requests and which, furthermore, can only be accomplished by the constatation agent.

In concrete terms, we refer to the fact that any request from the defense party (the contravener, their defense counsel, and others) regarding the administration of evidence, the constatation agent is generally obliged to satisfy.

At the same time, it is natural for the constatation agent to be entitled to reject abusive requests. These requests would typically involve the administration of evidence within the power of the defense party, and objectively, they are impossible. Each rejection of such defense requests must be strongly justified. This underscores the need for the constatation agent to possess a good legal background.

Last but not least, it is important to note the necessity of considering that the injured party - the victim in the contraventional process - also has the opportunity to assert their rights, as well as to request, in this regard, the administration of evidence. Although the constatation agent prima facie acts in the interest of the victim, they also serve as an arbiter, where their decision could be unfavorable to the purportedly injured party. Therefore, the victim's requests will be treated on equal footing by the constatation agent - they will be admitted, only to be rejected as an excep-

tion when obvious abuse is observed.

In conclusion, we wish to mention that the perspective of distinguishing between the function of accusation and the function of deciding on the contraventional case should also be achieved by excluding this competence for the constatation agent, a matter that will not only be a step towards aligning the text of the contraventional law with the Constitution of the Republic of Moldova, ensuring the implementation of the principle of justice solely by the courts [4, p.616], but also will represent a measure to ensure equity in a contraventional process.

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CURRENT PROBLEMS OF DOCUMENTING CASES OF ROAD TRAFFIC CONTRAVENTIONS

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Summary

The scientific article addresses current problems related to the documentation of the cases of committing offences in the field of road traffic. According to the data presented by the National Bureau of Statistics, the majority of decisions to apply criminal sanctions (71.2%) relate to violations in this area, with an increase of 20.9% compared to 2021. Fines remain the main penalty applied, and exceeding speed and non-compliance with road signs are the most common violations. In total, 479,4 thousand violations were found in the field of road traffic in 2022 [16]. The article stresses the importance of correct and effective documentation of these cases for ensuring road safety.

Keywords: road traffic offences, criminal sanctions, detective agent, documentation of a criminal case, criminal law, evidence.

Introduction. In the twenty-first century, urban and rural mobility has seen significant development. Electric cars, bicycles and tricycles have become affordable and ubiquitous, and urbanization has contributed to the increased need for transportation. Today, it is impossible to imagine a locality without them.

However, with the increase in the number of vehicles around the world, so have the negative impact on society. Road accidents have devastating consequences: every year, around 1.3 million people lose their lives and another 50 million suffer trauma. Traffic injuries are the leading cause of death among young people aged 15–29 [3, p.6]. It is imperative that we address these issues to improve traffic safety and protect people's lives.

Currently, many drivers do not signal when changing direction, do not wear seat belts and do not run red lights. Apparently, these facts are not very critical, but they can entail very serious, and in some cases even dangerous consequences for human life and health.

Road accidents have a negative impact on citizens, communities and countries around the world. According to the World Health Organization, these accidents generate significant costs in the healthcare system, occupying hospital beds, consuming resources and having serious consequences for productivity and prosperity, with profound social and economic implications.

Thus, most countries intensified their efforts to regulate this issue, which subsequently influenced the decisions of other states, because the old legislation was too complicated to apply the provisions of traffic law for the multitude of existing deviations. Quick and simple procedures were chosen to ascertain and apply appropriate sanctions. In states that currently maintain the criminal contravention law, as is the case in France, they have established a specific procedure for detecting and sanctioning traffic offences by establishing rules derogating from the common contravention law.

Therefore, the safety of citizens is one of the basic goals and tasks of each state, which is one of the conditions for the stability of a society. One of these mechanisms is the protection offered by contravention legislation, including in the field of road traffic. The contravention legislation established in a company has the task of protecting the most important forms of social goods and certain values in a society. Such protection is achieved by criminalizing certain human actions and behaviors and by prescribing sanctions for such behaviors and the manner in which they are imposed and enforced.

Methods and materials applied. The relevance and usefulness of any study largely depends on the choice of an appropriate methodology. In the context of this work, logical methods, especially analysis and synthesis, play an essential role.

Analysis is a method by which a concept is deconstructed into components in order to investigate in detail the structural elements of a phenomenon. By applying the analysis, we conducted a comprehensive study of the matter, identifying and highlighting the main problems related to documenting cases of committing traffic offences.

On the other hand, the synthesis allowed us to select the most relevant aspects from the set of information collected and analyzed. This led to the formulation of conclusions and pertinent solutions for improving the normative-legal framework and law enforcement mechanisms in the process of finding, examining and solving contravention cases in the field of road traffic.

We also used the exegetical method, which involves interpreting the meaning of legal norms through direct analysis of the text of the normative act. This approach allowed us to understand the legislator's intention and critically evaluate controversial legal provisions, contributing to standardizing the practices of interpretation and application of contravention law in the chosen field of study.

The purpose of the research is to analyze and identify difficulties in the documentation process. The paper aims to assess and highlight the challenges and obstacles encountered in correctly documenting cases of violation of road traffic rules. This may include analysis of existing methods, applicable legislation and current practices. Proposing solutions and improving the documentation process. In addition to identifying problems, the paper can provide recommendations and solutions for optimizing the documentation process. This may involve suggestions on the use of modern technology, adequate training of responsible personnel and improvement of the normative-legal framework. In essence, the paper aims to contribute to streamlining the documentation of cases of traffic offences, given the importance of this aspect for traffic safety and order.

Discussions and results obtained. For the investigating officer, the principle of legality implies the obligation to initiate proceedings and apply the sanction when he finds an infringement. In national judicial practice and legal literature, the contravention report is the basic document which, concomitantly, serves as evidence of the finding made by the investigating officer.

In accordance with Article 6, paragraph (3) of the European Convention on Human Rights, it is essential that before applying a contravention sanction, the offender is informed of the violation of legal provisions and given the opportunity to present his defense, including by taking evidence [4].

The finding of the contravention act represents the activity carried out by the ascertaining agent. This involves collecting and administering evidence on the existence of the contravention, concluding the report on the contravention, applying the contravention sanction or sending the file, as appropriate, to the court or other body for settlement [5, p.62-78].

Therefore, the right of the infringer to raise objections exists after the contravention report has been drawn up, when the investigating officer has already formed his conviction that the wrongful act has been committed. It shall not apply until the minutes have been drawn up. On the other hand, the contravention report may be concluded even in the absence of the offender, and this depends on his willingness to challenge or enforce the sanction imposed, according to the decision on which the offence was committed.

Although doctrine generally analyzes only the report of finding the contravention, we cannot neglect the notification of the ascertaining agent as the first moment of the procedure for finding a contravention. We consider that, in the contravention field, we should apply, by analogy, the criminal procedural provisions regarding the modalities of notifying the ascertaining agent, even if they are obviously incompatible with the provisions of the Civil Procedure Code [17].

According to the judicial practice of the Republic of Moldova, it is stated that the ascertaining agent can find a contravention only if he presents to the court evidence confirming the commission of the contravention act. In this context, in accordance with Article 441 paragraph (1) letter a) of the Contravention Code, the contravention proceedings against Cioric Daniela, accused of committing an offence provided for in Article 287^3 paragraph (2) of the same Code, should be terminated. The reason lies in the fact that the ascertaining agent did not administer the means of evidence provided for by Article 425 of the Contravention Code after the initiation of the trial, nor did he present such evidence at the court hearing to support the existence of the contravention act in the actions of the person concerned [14, p.77-82].

Since the contravention is regulated by a sanctioning system distinct from the criminal one, and the contravention liability is triggered through a specific procedure, the Romanian author M. Ursuta points out the existence of a distinct form of legal liability, which can be applied only if a person commits an act that has all the characteristics of a contravention [13, p.82].

A key observation is that many offences under national law can be detected directly by investigating officers through their own senses (*ex proprius sensibus*). Other contraventions, however, can only be proven by using approved technical means. The latter do not raise significant problems as regards proving their existence, since it is common knowledge that, in case of challenge, in the absence of evidence obtained by technical means, the existence of the fact mentioned in the report cannot be proved by the investigating officer (who bears the burden of proof!). In such situations, the court may annul the sanctioning act as unfounded.

If the fact is established directly by the investigating officer, the presumption of validity of the report carries greater weight. On the other hand, if the fact is proved by technical means, the presumption of innocence becomes more relevant, since the merits of the sanctioning act must be supported by evidence. In this context, the question may arise whether it is fair to treat the offender, usually of minor seriousness, directly established by the investigating officer, in a manner inferior to the offender established by means of an approved technical means. In that second case, it is for the investigating officer to prove the existence of the fact and the merits of the accusation made in the report.

In the context of practice, two different persons may commit two identical offences (e.g. driving without seat belts). In such a scenario, the first contravention is ascertained directly by the investigating officer, while the other contravention is established using an approved technical means (such as the video camera on the police van, mentioned in the report itself).

In that situation, the question arises whether the fact that an offence is established directly by the investigating officer and another by means of a technical means constitutes an objective criterion enabling a distinction to be made, from the perspective of legal protection, between offenders. It is relevant to consider whether the presumption of innocence of one of the perpetrators carries less weight than the presumption of innocence of the one whose act has been established by technical means.

At the same time, a crucial problematic aspect in the case of documenting traffic offences would be that, in the absence of an adequate description of the act, the judge cannot verify whether it constitutes an offence. Also, it cannot assess the real and personal circumstances of the contravention in order to verify whether the individualization of the sanction was correctly carried out by the investigating agent. In many situations, the lack of a sufficient description of the act raises questions about its competence. For example, an illegible report will be cancelled.

Minutes that merely reproduce the legal text without providing a concrete description of the act will also be annulled. In addition, reports of an offence which do not include identification data of the instrument measuring the speed of movement of motor vehicles will be subject to the same treatment. In the latter situation, the court will be faced with the difficulty of verifying whether the documents certifying metrological verification and verification of the special technical means, to be submitted to the file by the Police, really refer to the technical means with which the actual registration was made.

Finally, it is the exclusive prerogative of the court, invested with the resolution of an appeal, to assess whether or not the description made in the descriptive part of the report on the contravention, issued by the investigating agent, is sufficient or not for the exercise of judicial control. As has rightly been pointed out in legal literature, in the case of misdemeanors, a brief description of the facts may suffice, but in other situations, the absence of a single element in the description may lead to the cancellation of the minutes, that element being essential [10, p.194-195].

In a simple example that we will consider, when speeding offences are committed, it is crucial that the investigating officer mentions the place where the act was committed in the contravention report. This allows the court to verify whether the infringement took place in a locality or in an area with speed limits on the road. In the case of other contraventions, failure to mention the place does not necessarily imply an incomplete description of the contravention act.

In order to form conclusions about the essence and specificity of evidentiary value and rules for documenting traffic offences, it is recommended to analyze the Romanian doctrine on this topic.

According to one opinion, it is argued that exceeding the speed limit can be established by stopping the driver in traffic when stationary cinemometers are used, as is the case at present, only by a crew of at least two agents (one being the radar operator and the other being the agent stopping the vehicle in traffic) [1, p.198].

The fact that the report on the contravention is drawn up and signed by the investigating officer who stops the offender in traffic, not by the radar operator, does not lead to the nullity of the report. Although it is not mandatory for the investigating officer drawing up the report to personally ascertain the fact, if it is not established by him, the report does not benefit from the presumption of veracity. In that case, the report of the offence must be supported by sufficient evidence to prove the existence of the act and the guilt of the offender.

Under no circumstances may the speeding be ascertained personally by the investigating officer. This can only be proven by means of properly certified and approved radar equipment.

At the same time, in the documentation and detection of traffic offences, we cannot discuss the existence of a single procedure. For each individual offense, it is necessary to follow a series of specific actions. Otherwise, we cannot talk about a fair and multifaceted investigation of the contravention concerned.

As regards the documentation of traffic offences, when the investigating officer has personally ascertained that the offence has been committed, he must draw up the report on the offence. If the contravention found does not fall within the scope of his competence to examine, the ascertaining agent has the right to draw up the report without receiving a decision on the violation found.

If the report on the contravention must undoubtedly reflect the commission of the act by the person in respect of whom this act is drawn up, especially in the case of instantaneous contraventions at which the investigating officer was not present at the time of committing it, it is necessary to include witness statements in the report or to present evidence proving that the contravention has been committed. This evidence must be gathered in accordance with the rules of the contravention law. The burden of proving the contravention act lies with the ascertaining agent, who has powers provided by law to prove the documented contravention.

Based on the legal basis for initiating the contravention procedure, the ascertaining agent, having the right to directly ascertain the fact of the contravention, deals with the accumulation of evidence to confirm or deny its existence [2, p.65].

The investigation of the case and the finding of the true circumstances of the occurrence of the contravention act is carried out by various methods, and one of the basic ones is the hearing of the participants in the contravention procedure. Any person who has information about the contravention or the personality of the perpetrator can be summoned: the injured party, witnesses, specialists or even the perpetrator himself. Also, the investigation of the circumstances of committing the contravention act may involve the study of material evidence, objects and documents related to the contravention. The contravention procedure begins when, from the content of the notification, the existence of a contravention act is found, and the competent ascertaining agent initiates the collection and administration of evidence to confirm or deny the commission of the contravention.

According to the author S. Furdui, with the beginning of the contravention procedure for cases of documentation of contraventions in the field of road traffic, the application of the contravention law follows. This activity was structured in four stages [6, p.69], also mentioned in the works of authors V. Gutuleac and V. Stratu: 1) Establishing the state of affairs involves clarifying the circumstances that require the application of the contravention law in a given situation; 2) The choice of contravention law rule refers to the selection of the norm to be applied according to the concrete circumstances established; 3) The interpretation of the contravention norm involves performing logical-rational operations to clarify the exact meaning of the contravention law norms. This step is important in atypical cases, where rules contain ambiguous wording or careless wording [7, p.33]; 4) The elaboration and issuance of the act for the application of the contravention norm represents the last step of the application process, with consequences on concrete legal relations [11, p.55].

It is important to note that each procedural action must be recorded in certain procedural documents, such as minutes, orders or conclusions, which, in turn, are attached to the contravention file. Furthermore, where restrictions or limitations to human rights and fundamental freedoms apply, reasons must be given to the person concerned, explaining his or her rights and obligations. This process also includes the right to object to the actions of the ascertaining agent, and these objections must be recorded in the act recording the procedural actions [12, p.56].

According to Article 442 of the Contravention Code, the report is an act that individualizes the illicit act and identifies the perpetrator. The report is concluded by the ascertaining agent on the basis of personal findings and accumulated evidence, in the presence of the perpetrator or in his absence and it is necessary to comply with the requirements of the provisions of the Code [4].

It is essential to mention that decisions on contravention cases are also included in the minutes. These decisions are individual administrative acts and enjoy the presumption of veracity applicable to administrative acts, provided they are drawn up lawfully [9]. However, we must start from the procedural premise that no piece of evidence has a predetermined value. The mere fact that a decision has been drawn up on the contravention case is not sufficient to imply the contravention liability of the person, if the conditions imposed by law have not been observed. Therefore, it is mandatory for the investigating officer to ensure that these conditions are met.

At the same time, before drawing up the report, the investigating officer must establish the causes and conditions that contributed to the infringement. It must also identify the person who committed it, assess the mitigating and aggravating circumstances, and other conditions relevant to the case.

The identity of the person shall be established either by the documents submitted or by means of special telecommunication means provided by the ascertaining agent.

It is mandatory for the agent to access the data through the available terminal, using the

Internet, in order to obtain information about penalty points and to find out details about the person or car concerned. This information must be entered into the Automated Information System "Record of traffic offences and penalty points accumulated on the basis of sanctions applied" no later than 24 hours from the registration of the report and request of the ascertaining agent or from the date of conclusion of the report [8].

Based on the above, we will emphasize imperatively that the report on the contravention, being a unilateral administrative legal act, is issued by a public authority with the power to ascertain and sanction the contravention acts. This document benefits from presumptions of legality, authenticity and veracity. However, the presumption of innocence of the offender may not be violated. Thus, even if the report has probative force and is executed ex officio, the investigating officer is not exempt from the obligation to substantiate it with evidence when the report is contested.

At the same time, in the opinion of the author Ursuta M., it is important to highlight that the report on the contravention, drawn up on the basis of the personal findings of the ascertaining agent, benefits from the presumption of authenticity and veracity. However, where the record is drawn up using technical evidence, this presumption shall not apply. In this situation, the burden of proof lies entirely with the issuer of the report, who is obliged to make available to the court the records and all documents drawn up on the basis of technical means.

Therefore, in the case of contravention acts established with the help of approved and metrologically verified technical means, the ascertaining agent must prove that the factual situation recorded in the report corresponds to the truth. Without this evidence, the presumption of innocence of the offender is not rebutted [15, p.224].

Conclusions. At the moment, it is imperative that the state authorities direct their efforts towards the prevention of crime and contraventiveness in the field of road traffic. Implementing effective safety policies should be a priority in order to ensure a safer environment on public roads.

Subsequently, in order to improve this, we should focus on the modernisation of information systems, namely, the development of a centralised and effective system for the recording of infringements, which would allow information to be entered by all detection agencies at the national level.

At the same time, the implementation of transparency and efficiency which consists of simplifying administrative procedures and eliminating bureaucracy in order to ensure coherent and effective application of sanctions. Education and awareness-raising which would promote road education and will raise public awareness about traffic rules and the consequences of violations.

Last but not least, technological monitoring which consists in the development and modernization of automated traffic surveillance systems to increase the efficiency and accuracy of documentation.

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THE PLACE OF ENVIRONMENTAL LAW PRINCIPLES IN THE SYSTEM OF LEGAL PRINCIPLES

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Summary

The respective article is dedicated to the subject of the place of environmental law principles in the system of legal principles. The principles of environmental law are a subject of great resonance in legal thought, so the topicality of a scientific study is due to the important role they play in the administration of justice.

However, those who are empowered to apply the law must know not only the legal norm, but also its spirit, and the principles of law determine precisely the spirit of the laws.

Keywords: principles of environmental law, system of principles of law, general principles of law.

Introduction. It is rightly argued that establishing the principles and their meanings and the nature and essence of the environmental relationship is an important operation in defining any branch of law. This is due to the constant concern for environmental protection on the part of both the public and the state, which is a decisive factor in revealing its specific nature.

Environmental law principles are a subject of the utmost resonance in legal thinking, so the topicality of a scientific study on the place of environmental law principles in the system of legal principles is due to the important role they play in the administration of justice. Those responsible for applying the law must know not only the legal norm but also its spirit, and the principles of law determine the spirit of the law.

In this context, the principles of environmental law are strongly present in the legal-action framework: both in the implementation phase of the law, a clear identification of environmental law principles is required, as well as in the drafting phase of laws, in order to determine a particular style for environmental regulations. However, the legal rules of environmental law relate to specific legal principles in two senses: on the one hand they contain and crystallise the principles, and on the other hand the operation of the principles is achieved through the drafting and application of the rules.

Based on the above considerations, the place of environmental law principles in the system of principles of law lends itself by its problematics, conceptualization and timeliness of delimitations.

Methods and materials applied. Theoretical, normative and empirical material was used in this scientific approach. Thus, the research on the subject was made possible by consulting lo-

cal literature and applying several research methods, namely: observation, comparative analysis, correlational analysis, generalisation, and other modern methods of study.

Purpose of the research. The main purpose of the work is to determine the place of environmental law principles in the system of legal principles in order to identify the specific elements of application of those principles. To distinguish environmental law principles from other principles of law, which is not only a theoretical, but also a practical issue.

Thus, the subject in question represents a constant segment of scientific concerns, which directly involves original visions, discoveries resulting from clearly defined objectives which must be reflected in legislation. This is due to the fact that the principles of environmental law are closely linked to general principles of law and/or principles specific to certain branches of law.

Discussions and results obtained. Since the emergence of environmental law as a branch of jurisprudence and up to the present time, there are still discussions around the issue of recognition of environmental law as a branch of law. As stated, environmental law (often referred to as environmental law) is a branch of law that is working its way towards the status of "city law", i.e. an autonomous branch. There is no doubt that environmental law is not only a domestic branch of law but also has international significance [1, p.46].

Speaking of the place of environmental law in the system of branches of law, we must establish the position of environmental law as belonging to public or private law, and the relationship of environmental law with other branches of law, whether public or private law [2, p.25].

In this sense, we support the idea that the position of environmental law is clear, being a branch of public law. The fact that environmental law belongs to public law is based on the criteria for delimiting these two systems, which are also accepted in legal theory [3, p.116, 117].

In prefiguring and specifying the profile and specific meanings of this branch of law, particular importance is attached to revealing the specific connections and differences of the principles of environmental law in relation to the other legal principles of the legal system. Environmental law principles therefore extend their framework not only to the legal aspect of environmental protection, but also to all areas of human law related to the use of environmental components.

Just as there are no yesterday's and today's ideas, due to the timelessness of ideas, so the principles of environmental law cannot be immutable and take on the characteristics of the moment in which they are applied. From this point of view, the place of the principles of environmental law in the system of principles of law, the requirement to emphasise their necessity and their own determinations, is primarily concerned with the universalisation of principles. The principles of environmental law are interconnected, but at the same time they are linked to the principles of the other branches of law as well as to the general principles of law. Thus, with the diversification of social relations, the principles of environmental law are evolving and new principles are emerging, such as the precautionary principle and the precautionary principle, which can be found in all systems of law, international, national and union.

In the following we will briefly analyse those principles which are or can be in connection with the principles of environmental law contained in the Constitution of the Republic of Moldova, together with some principles of the Union law and their effect on national principles.

In this context, we note that the Constitution of the Republic of Moldova contains rules that enshrine meanings of the principles of environmental law, such as the use of natural resources only within those limits and areas that would exclude the possibility of worsening environmental conditions.

In this sense, we mention the principle consecrated in the legislation of the Republic of Moldova [Art.3 let.a)]: "the priority of environmental protection purposes and activities within the framework of the realization of the economic and social-human interests of the population for the present and future", which is reflected in Articles 36, 37, 59 of the Constitution of the Republic of Moldova and in the organic laws that reflect the field of use and protection of environmental factors.

Liability of all natural and legal persons for damage caused to the environment; preventing, limiting and combating pollution, as well as recovering the damage caused to the environment and its components on behalf of natural and legal persons who have admitted (even unconsciously or negligently) the damage. This principle is one of the most important principles, which enshrines a new institution of environmental law, namely the *institution of environmental liability*, based on the principle of strict liability for acts causing environmental damage. Being a general and universal principle, it also establishes the right to impose categorical prohibitions on polluting activities [5, p.26].

In the context of the requirements of environmental legislation, as well as guaranteeing fair compensation, we support the idea that the principles underlying liability for environmental damage and tort liability are to be integrated into a single system of principles, which through interaction and mutual support will underpin the regime of specific liability for environmental damage to persons and their property. At the same time, it is also argued that the principles of civil reparatory liability are applicable, which are adapted to the particularities of environmental law legal relationships [6, p.210].

Thus, where acts of pollution cause damage to private individuals, in addition to the principles of full compensation and compensation in kind for damage which are specific to civil liability, the precautionary principle, the "polluter pays" principle and the principle of liability without fault will also be applied.

This principle is expressly laid down in Article 4 letter d) of the Air Quality Act [7]. This Act partially transposes Directive 2008/50/EC of the European Parliament and of the Council of 21 May 2008 on ambient air quality and cleaner air for Europe (Official Journal of the European Union L 152 of 11 June 2008) and Directive 2004/107/EC of the European Parliament and of the Council of 15 December 2004 relating to arsenic, cadmium, mercury, nickel and polycyclic aromatic hydrocarbons in ambient air (Official Journal of the European Union L 23 of 26 January 2005), as last amended by Commission Directive (EU) 2015/1480 of 28 August 2015.

Although this principle is not expressly enshrined in the Environmental Protection Act, there is no doubt, however, that it is deduced from the content of Article 3 let. e) of the above-mentioned law, which provides for the use of soil, subsoil, water, forests for economic and social-human purposes in accordance with the legislation in force; the levying of fees and the imposition of fines for violations of environmental protection legislation; the exclusive use of the funds thus obtained to combat environmental pollution, the drying up of natural resources, the development of dangerous geological processes, the recovery of the environment and its components and the regeneration of natural resources. As can be seen, the principle referred to in Article 3(e) seems to be considered the basis and idea behind the drafting of Law No.1540/1998 on payment for environmental pollution [8]. At the same time, Article 6(b) of the Water Act No.272/2011 [9], enshrines the "polluter pays" principle, according to which the costs of preventing pollution or cleaning up water resources are borne by the polluter.

This principle is already recognised as a fundamental principle of international environmental law, i.e. it has also found a specific reflection in the system of Community legal rules. Moreover, it should not be forgotten that the "polluter pays" principle forms the basis of Community environmental policy. The Community legislator must treat the issues of taxes and subsidies as a matter of priority; the rule has no major implications for liability for environmental damage, the decisive role in this area being played by national law.

With regard to the incorporation and applicability of the polluter pays principle in the matter of liability for environmental damage, which, as we have mentioned, is a civil rather than an environmental one, we have to mention that once the damage caused to the person, resulting from the consequences of the damage caused directly to the environment, in this way we consider that the present principle will inevitably have implications. In this sense, the victim will base his action

on the polluter pays principle, in addition to other principles applicable to civil liability in tort, and this is because environmental law liability implies that when environmental damage is found, and is not foreign to the owner of the environmental asset affected, the rules on full compensation are applied in a particular way. In this chapter, the principle of full compensation for the damage caused is applied in the context of the polluter pays principle [5, p.78].

With regard to the link between general principles of law and environmental principles, we note that there is an intrasystemic interaction between the principle of freedom, which is directly connected horizontally with the principle of responsibility, the principle of responsibility implicitly coordinates with the principle of justice. Access to justice is a fundamental element of the rule of law and the enforcement of the conditions for the realisation and defence of environmental rights is possible through the implementation of the right of access to justice in environmental matters in national practice. In order to determine the conditions of application of the right of access to justice in environmental matters, we propose to analyse in detail the provisions of Article 9 of the Arhus Convention on access to information, public participation and access to justice in environmental matters [10].

By applying the provision of Article 4 of the Arhus Convention, "any person" who has requested information has "procedural capacity" and is entitled to benefit from the examination procedures, which allows him to challenge refusals to provide the requested information. Equally important, in our view, is to accept the idea that "the group of people who have the right of access to environmental information is not limited to the group of people who have the right to go to court, which underpins the principle of public access to environmental information". It was possible to deduce this principle from the case law presented at the seminar for training lawyers on access to justice in environmental matters under the Arhus Convention, which took place in 2001 [11, p.21].

Conclusions. Any system is a set of interacting elements, mutually dependent on each other, with specific properties, as a distinct formation relatively autonomous from others [12, p.104].

The structural element of the system of principles of law is the principle of law. The system of principles of law is the formation of principles of law with quantitative and qualitative determinations specific to the positive legal system, which integrates and subordinates the principles of law according to component elements.

In the light of the above, we conclude that it is not possible to speak of the principle that environmental protection is an objective of major public interest without speaking of general principles, such as the principle of legality or social solidarity, or of specific principles, such as the principle of democracy and sovereignty of the people, of constitutional legality.

Under the first aspect, of interconnection, we have highlighted the link between the principle of civil liability for environmental damage and the precautionary principle, the principle of liability without fault and the polluter pays principle. In turn, the polluter pays principle is linked, through its concrete applications, to principles of criminal law; the principle of preventive action, through its forms of application at the economic level (and here we consider authorisation procedures), is closely linked to principles of administrative law; the principle of integrating environmental requirements into other sectoral policies is closely linked to the principles of the separation of powers in the state and political pluralism.

Another aspect is directly related to the use of natural resources only within those limits and areas which would exclude the possibility of worsening environmental conditions, and which is closely linked to the principle of the exercise by the state of its sovereign right to exploit natural resources in accordance with its national interest and environmental policy. The principle of the right to a healthy environment is linked to the principle of access to information, public participation in decision-making and access to justice in environmental matters.

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SUSPENSION OF THE EXECUTION OF THE INDIVIDUAL ADMINISTRATIVE ACT

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Summary

The article in question is devoted to the subject of suspending the enforcement of individual administrative acts. With the entry into force of the Administrative Code of the Republic of Moldova, a real "legal revolution" has taken place - a challenge for public authorities and courts, which, we must admit, requires scientific research and standardization of judicial practice.

The postponement is meant to temporarily stop the executory function of the individual administrative act. The postponement is admissible only for individual administrative acts that can be annulled by an appeal (annulment).

Keywords: suspension of execution of individual administrative act, normative administrative act, reasons for suspension, legality.

Introduction. With the entry into force of the Administrative Code of the Republic of Moldova [1], a real "legal revolution" has taken place – a challenge for public authorities and courts, which we must admit requires scientific research and standardization of judicial practice.

The Administrative Code, through its regulations, highlights a stage of development of the Republic of Moldova, reflecting about 90% of the German legislation on administrative procedure and administrative dispute procedure.

Thus, although judges were specialized in administrative litigation, the Administrative Code brought with it new regulations, new legal instruments in the field of administrative procedure and administrative acts, highlighting substantive changes to administrative acts, but at the same time less known to the legislation prior to the entry into force of the Administrative Code.

The Administrative Code introduced new rules on the suspension of administrative acts:

– Suspension of the administrative act by right by filing a request for suspension;

– Competence of the public authority to suspend the administrative act in the preliminary procedure;

– Possibility to request suspension of the act before filing an action in court.

The introduction of these rules is based on the idea of provisional protection of the citizen at risk of being irreparably prejudiced by the act of a public authority as well as a number of international recommendations and practices.

Starting from the reality that "the Administrative Code was drafted as a citizen-friendly legislation, establishing an effective judicial control in order to protect subjective rights from any abuses and excesses on the part of the public authority " [2, p.14], we will try, for the purposes of the following, some punctual and, we believe, substantive observations.

Methods and materials applied. Theoretical, normative and empirical material was used to carry out this scientific approach. Thus, the research on the subject was made possible by consulting local literature, analyzing doctrinal opinions and theories, as well as national case law covering the nature of the individual administrative act.

The following research methods were used to substantiate the proposed research: the historical method, in order to identify the evolution of concepts and regulations related to the administrative act; the quantitative method and the scientific method, which served us to gather, store and report on the information contained in legislation, case law and international and national doctrine on administrative law; the logical method, in order to structure the research in question in relation to the proposed aim; and, last but not least, the comparative method, which is a necessary epistemological tool for identifying the common elements between the different forms of administrative act, and which leads conclusively to the versatility of concepts and theories.

Purpose of the research. The main purpose of the paper is to problematize the legal grounds for suspending the execution of the individual administrative act. However, among the numerous legal institutions regulated by the Administrative Code, one, which requires no less special attention from the perspective of effective legal protection, is the suspension of the execution of the unfavourable individual administrative act.

Thus, the subject in question is a constant segment of the concerns of civil servants, judges, lawyers and other practitioners of rights, who are also joined by the academic community. This is due to the fact that the vulnerability of some fundamental institutions of public administration and administrative law in the face of the chronic deficit in the quality of regulations calls for signalling the way to the possible reconceptualisation of some situations and theories.

Discussions and results obtained. The administrative act, in the broadest sense, is a unilateral legal act and consists of an express manifestation of will by which legal relationships of administrative law are created, modified or extinguished. The administrative act is one of the main sources of legal relationships under administrative law. It constitutes a special category of legal acts adopted or issued by public authorities, public institutions and other organisational structures established under the law, which ensure the performance of tasks incumbent on public administration [3, p.15].

As mentioned above, the Administrative Code, through its regulations, being an inspiration from German law, highlighted the concept of the individual administrative act. According to Art.10 para.(1) of the Administrative Code, the individual administrative act is any provision, decision or other official measure taken by the public authority to regulate an individual case in the field of public law, with the aim of producing immediate legal effects, by creating, modifying or extinguishing legal relations under public law. However, in order to be admissible, the application for suspension must, in addition to its individual character, be an act which is unfavourable, i.e. which imposes obligations, penalties, burdens or affects the legitimate rights/interests of the persons concerned or which refuses, in whole or in part, to grant the benefit requested.

Being an ever topical issue in administrative law, the study of the suspension of the execution of individual administrative acts is of major importance, as it is a fundamental element of the internal administrative procedure.

In this context, we note that suspension is a temporary state of an administrative act of an individual or normative nature whereby it ceases to produce legal effects.

Various researchers, national and foreign, have been concerned with the issue of examining cases of suspension of the execution of individual administrative acts. For example, professor Antonie Iorgovan states that: "by suspension is meant the legal operation, which determines the temporary, provisional cessation of the effects of administrative acts. It is ordered, as a rule, when there is a doubt about the legality or appropriateness of an act. When there is certainty as to this illegality or inappropriateness, a definitive measure is taken to terminate the effects of the administrative act, such as revocation, annulment [4, p.329].

In another of his works, he notes that the administrative act enjoys the presumption of legality, coupled with the presumption of truthfulness and the presumption of authenticity, from which follows the principle that the administrative act is enforceable ex officio *(executio ex officio*) from the moment it is communicated to the addressee, but only as long as the court has not intervened

through effective legal-procedural instruments to paralyse enforcement or to annul it [5, p.65].

According to another view, the suspension of administrative acts is a guarantee of legality, but only in exceptional cases, in borderline situations. It is aimed either at temporarily interrupting the production of legal effects or temporarily postponing the production of legal effects [6, p.54]. Therefore, as the principle of ex officio execution applies to administrative acts, suspension appears to us as an exceptional situation, which can be "*de jure*" – when the law provides for it, or "judicial", but within the limits and conditions laid down by law [7, p.63].

It has been pointed out in the legal literature that suspension can operate either by express provisions of the law or by a legal act (administrative legal act of the administrative body or of the superior body within the limits conferred by the law, decision of the court). Communication of the individual administrative act to the addressee or third party is sufficient for its legal validity unless the administrative act was void from the outset [8].

Thus, the communication of the individual administrative act to the addressee or the third party affected, generates its effectiveness (validity), produces the corresponding legal effects, including enforceability. The enforceability of the individual administrative act is one of the most important legal effects. For its enforcement, the public authority is entitled to apply even enforcement measures (e.g. enforcement by substitution, coercive fine, etc.). Therefore, the individual administrative act is enforceable from the moment it becomes valid [8].

In the same vein, we agree with the opinion of local authors N. Fală, M. Poalelungi who mention that the term "*validity*" of the individual administrative act is not defined by the Administrative Code. This concept includes: external and internal validity (internal efficiency). The "*external*" effectiveness is generally understood as the obligation of the addressee or third party affected by the individual administrative act, even if the specific regulation – e.g. due to a suspensive condition or a time limit – enters into force later. Thus, the latter is only a matter of "*internal*" effectiveness.

In accordance with Article 214 para. (1) of the Administrative Code, the suspension of the execution of the contested individual administrative act may be requested by the plaintiff to the court examining the administrative dispute.

The suspension of the execution of the administrative act creates an effective remedy to ensure compliance with the principle of legality – a principle that governs all the activity of the public authority. The admissibility of the application for suspension is conditional on the intervention of the public authority through the unfavourable individual administrative act [5, p.21].

Further to the above, we affirm that the suspension of the execution of the unfavourable individual administrative act is an urgent and provisional measure, which, in essence, has the purpose of ensuring an effective protection of the rights injured by individual administrative acts issued by public authorities.

These conclusions can be drawn from the analysis of Articles 3, 36, 39, 40 and 219 of the Administrative Code. For a clearer argumentation, it is necessary to mention that the legal provisions mentioned are reflected in Article 20 of the Constitution of the Republic of Moldova, which provides that every person has the right to effective satisfaction by the competent courts against acts that violate his rights, freedoms and legitimate interests. No law may restrict access to justice [9].

Article 172 of the Administrative Code establishes a general rule for suspending an unfavourable administrative act: "if an unfavourable individual administrative act is challenged with a prior request, the public authority, ex officio or at the request of the affected person, may suspend its execution until the completion of the preliminary procedure". It follows from the above that the right to request the suspension of the unfavourable individual administrative act is enjoyed by the person who, through the effects of an unfavourable individual administrative act, is injured in his rights recognised by law. The right to suspend the effects of an unfavourable individual administrative act is enjoyed only by the issuing public authority. This is also regulated in Art.164 para.(3) of the Administrative Code, which stipulates that, if the prior request is submitted to the superior public

authority, it shall immediately forward to the issuing authority the prior request and a possible request for suspension of the execution of the individual administrative act. The day on which the request is lodged with the superior public authority shall be deemed to be the day on which the request is lodged with the issuing public authority. The time limit for the processing of the application for suspension of the enforcement of the individual administrative act referred by Article 172 para. (1) let. a) shall be the same as the time limit for the processing of the application, and para.(3) shall start to run from the date of registration of the application with the issuing public authority.

The subject matter of the suspension of the administrative act is provided by Article 214 para.(2) of the Administrative Code, which stipulates that the court may order the suspension of the execution of the individual administrative act on the grounds of the Art.172 para. (2).

The verb "*may*" in the cited normative text denotes a discretionary right of the court to impose the suspension of the unfavourable individual administrative act. However, the exercise of that discretion cannot constitute a means of carrying out an arbitrary activity. Suspension, as a judicial remedy, is to be ordered by the court in a fair balance with the rights of the individual, the public interest and the need to respect the rule of law. Any obvious illegality of the individual administrative act is a serious reason to suspend the execution of this act [10, p.28].

With reference to the grounds for suspension, as mentioned above, these are set out in Art.172 para.(2) of the Administrative Code, as follows:

(a) the existence of serious and reasonable suspicions as to the legality of the unfavorable individual administrative act;

b) the existence of an imminent danger of irreparable damage through the continued execution of the unfavourable individual administrative act.

From the meaning of the above mentioned rule, it follows that the legislator has established that the administrative act may be suspended only under two conditions which are not to be met cumulatively, namely: in case of unquestionable confirmation of the existence of serious and reasonable suspicions regarding the legality of the unfavourable individual administrative act and/or the existence of an imminent danger of irreparable damage through the continued execution of the unfavourable individual administrative act [11].

With reference to the first ground provided by the legislator, the Chisinau Court of Appeal maintains the following position: in order to suspend the execution of the administrative act – the existence of serious and reasonable suspicions regarding the legality of the unfavorable act, the court, by the notion of reasonable suspicions regarding the legality of the individual administrative act, means those factual circumstances that would convince the judge that the individual administrative act would be illegal, because the actual illegality of the individual unfavorable administrative act is a substantive element and is verified only during the judicial debates. This reasoning follows from the fact that the unlawfulness of the individual administrative act is one of the cumulative conditions for the admissibility of the action. With regard to this condition for suspending the execution of the unfavourable individual administrative act, it follows that the illegality of the individual administrative act concerns two dimensions of legality, the opposite of illegality being procedural (formal) legality and material legality [11].

As regards the second ground provided by the legislator and invoked by the first instance for the suspension of the administrative act – the existence of an imminent danger of irreparable damage through the continued execution of the unfavourable individual administrative act, the College notes that the purpose of applying this ground is to create a favourable climate for the execution of a possible court decision, so in order to order the suspension of the execution of the contested administrative act, the injured person must prove the grounds for the request, as well as the fact that the suspension aims to prevent irreparable damage. In turn, irreparable damage presupposes the existence in the act concerned of provisions which, if implemented, would cause the applicant damage which would be difficult or impossible to remove if the act were annulled.

The prevention of irreparable damage requires the avoidance of future and foreseeable material damage, which could not be achieved after the judgment has been given [11].

However, in practice, there is no clear trend in resolving the conflict between the rules on the suspension of administrative acts in the Administrative Code and the special laws. Some judges give priority to the rules of the Administrative Code, citing controversial arguments that they would give more provisional protection to the individual and that the application of the special rules would violate the Recommendations of the Committee of Ministers of the Council of Europe. Some give priority to the special rules, and in some cases judges refer to both laws without resolving the conflict between them [12].

In particular, the conflict relates to three issues:

– Suspension of the administrative act as of right upon submission of the request for suspension (Article 171(4) Administrative Code);

– The request for suspension of the act until the court has filed an action for administrative review (Article 214(1) of the Administrative Code);

– Conditions for the application of the suspension (in the Administrative Code there are 2 alternative conditions, in the special laws there are three conditions that must be met cumulatively) [12].

As a matter of principle, we mention that the above provisions of the Administrative Code do not apply to the acts of the NBM and the NCFM, as the provisions of the special laws are applicable.

In another order of ideas, the suspension of an individual administrative act may be necessary in several situations, among which we can note the following:

a) The submission of a prior application or legal action by the person whose rights have been infringed by the contested act;

b) Change in the factual circumstances after the act has been issued and the appropriateness is called into question;

c) The need to coordinate the individual administrative act with the acts of a higher hierarchical body issued subsequently;

d) The application of a sanction to the natural person who has committed an administrative offence;

e) Clarification of the issuing body's reasonable suspicion of the legality of its own act.

Conclusions. The innovative and original dimension of the scientific results obtained in the process of developing this research is determined by the following conclusions:

We consider that, however many situations in which suspension may be operated, they cannot transform suspension into a rule of the legal regime of administrative acts like annulment.

With regard to the suspension of individual administrative acts, we maintain that it can take the following forms:

a) On the basis of an express provision of the law (de jure suspension);

b) On the basis of a judicial act (in an action challenging an individual administrative act or in a separate action for suspension of an individual administrative act, under the conditions provided for in Part II of Article 214 of the Administrative Code of the Republic of Moldova);

c) On the basis of the decision of the superior public authority;

d) Based on the decision of the issuing authority.

The grounds for suspending the enforcement of the adverse individual administrative act provide effective intermediate protection for the claimant when the adverse individual administrative act has serious shortcomings in terms of the legality of the public administration. Suspension, as a preliminary protective measure, is only possible when the subjective right is to be protected by means of an action for judicial review.

An application for suspension may also be lodged pending the lodging of the appeal. The suspension of the execution of the individual administrative act does not constitute a prior exposure of the subject matter of the action in appeal, and the suspension of the execution of the indi-

vidual administrative act does not ultimately constitute grounds for admitting the action, unless the individual administrative act is unlawful and the right of the plaintiff is infringed.

The suspension of the execution of the administrative act is also required by virtue of Recommendation No. R(89) of 13.09.1989 of the Committee of Ministers of the Council of Europe [13] on interim judicial protection in administrative matters, which emphasises that it is desirable to provide persons with interim protection without, however, recognising the necessary effectiveness of administrative action. That recommendation shows that the immediate and full execution of administrative acts which are contested or likely to be contested may, in certain circumstances, cause irreparable damage which equity requires to be avoided as far as possible.

Thus, it is clear that such measures may be taken in particular when the execution of the administrative act is likely to cause serious damage, difficult to repair even when there is an apparently valid legal argument against the legality of the administrative act. The above-mentioned recommendation asks the judicial authorities to decide on provisional protection measures within the limits of their competence and without in any way influencing the decision on the merits, all the more so when there is an apparently valid legal argument in relation to the legality of the contested administrative act. In this context, it must be concluded that the competent court is not automatically and unconditionally obliged to order the suspension of the administrative act, as it is absolutely mandatory for obtaining judicial protection to prove that the conditions laid down by the rules of national law have been met [10, p.29].

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